

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

MARLO THOMAS,

Appellant,

v.

WILLIAM GITTERE, et al.,

Respondents.

Electronically Filed
Jun 14 2019 03:06 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 77345

District Court Case No.
96C136862-1

(Death Penalty Case)

APPELLANT'S APPENDIX

Volume 22 of 35

Appeal from Order Dismissing Petition for Writ of Habeas
Corpus (Post-Conviction)
Eighth Judicial District Court, Clark County
The Honorable Stefany Miley, District Judge

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on June 14, 2019. Electronic Service of the foregoing APPELLANT'S APPENDIX shall be made in accordance with the Master Service List as follows:

Steven S. Owens
Chief Deputy District Attorney

/s/ Jeremy Kip

An Employee of the
Federal Public Defender,
District of Nevada

1 PROSPECTIVE JUROR SCHNEITER: Yes.
2 THE COURT: Could you keep an open mind and consider
3 each of those options equally?
4 PROSPECTIVE JUROR SCHNEITER: Yes.
5 THE COURT: Any reason you couldn't be a fair and
6 impartial juror in this case?
7 PROSPECTIVE JUROR SCHNEITER: No.
8 THE COURT: All right, thank you very much, sir.
9 Questions, pass for cause?
10 MR. ROGER: Pass for cause, Judge.
11 THE COURT: Thank you. Questions, pass for cause?
12 MS. McMAHON: Yes, Your Honor, if I may. Good
13 morning.
14 PROSPECTIVE JUROR SCHNEITER: Good morning.
15 MS. McMAHON: I have the jury questionnaire in front
16 of me that you filled out and there's one area I'd like to ask
17 you about.
18 I don't know if you recall this section, but the
19 questionnaire tells you that if you reach the penalty phase
20 then you have three alternatives; imprisonment with the
21 possibility of parole, life imprisonment without the
22 possibility of parole, and death. Then under that the form
23 tells you that you must consider the defendant's background,
24 that is mitigating circumstances, such as his health, mental
25 status, age, childhood experience, education, et cetera. Do

1 you feel you would consider those factors and it relates to
2 the three penalty forms, and you've marked not sure and
3 unsure.

4 PROSPECTIVE JUROR SCHNEITER: That is correct.

5 MS. McMAHON: After being here this morning and
6 listening to Judge and the questions that have been asked, can
7 you tell me whether could you serve on this panel as a juror,
8 and in fact the penalty phase was reached, that you would
9 consider all of those factors in determining punishment?

10 PROSPECTIVE JUROR SCHNEITER: If I was in Mr.
11 Thomas' position, yes, I would like to have me on here,
12 because of the fact that I am impartial, and that I would be
13 able to reach a verdict based on information only.

14 MS. McMAHON: That's good to know, but that doesn't
15 answer the --

16 PROSPECTIVE JUROR SCHNEITER: That doesn't answer
17 the question, sorry.

18 MS. McMAHON: Okay. The question is, if in fact a
19 verdict of guilty was reached, the second phase, the penalty
20 phase, as a juror you're required to consider background
21 information, health, education, childhood experience, et
22 cetera, in determining which of the three alternatives is the
23 appropriate sentence. On your questionnaire the response you
24 marked was not sure, unsure. So my question to you now is, if
25 you serve as a juror and in fact a verdict of guilty were

1 returned and the penalty phase, would you, knowing that it
2 would be required of you, be able to consider the factors I've
3 enumerated in determining the appropriate sentence?
4 PROSPECTIVE JUROR SCHNEITER: Yes.
5 MS. McMAHON: Thank you. I have no further
6 questions. Pass for cause.
7 THE COURT: Pass for cause? All right, Ms. Bell?
8 PROSPECTIVE JUROR BELL: Yes.
9 THE COURT: How long you been in Las Vegas?
10 PROSPECTIVE JUROR BELL: Eight years.
11 THE COURT: And what do you do for a living?
12 PROSPECTIVE JUROR BELL: I'm a store manager of a
13 retail store.
14 THE COURT: What store?
15 PROSPECTIVE JUROR BELL: The Disney Store.
16 THE COURT: What is -- is it in the Forum or
17 something? I don't know --
18 PROSPECTIVE JUROR BELL: Mm-hmm. Yes.
19 THE COURT: The Forum, all right. Are you married?
20 PROSPECTIVE JUROR BELL: No, engaged.
21 THE COURT: Children?
22 PROSPECTIVE JUROR BELL: No.
23 THE COURT: Okay, have you ever been in the
24 military?
25 PROSPECTIVE JUROR BELL: No.

1 THE COURT: Are you acquainted with anybody in law
2 enforcement?
3 PROSPECTIVE JUROR BELL: Casual acquaintances. A
4 girl that used to work for me, her husband works for Metro and
5 a friend of mine's brother-in-law.
6 THE COURT: Oh, that's not going to affect your
7 deliberation?
8 PROSPECTIVE JUROR BELL: No.
9 THE COURT: You're not going to give greater weight
10 or lesser weight to a police officer's testimony simply
11 because they are a police officer, are you?
12 PROSPECTIVE JUROR BELL: No.
13 THE COURT: You ever been a victim of a crime?
14 PROSPECTIVE JUROR BELL: Just car vandalism, about
15 four different times.
16 THE COURT: Did they catch the individual?
17 PROSPECTIVE JUROR BELL: No.
18 THE COURT: That's going to affect your
19 deliberations is it?
20 PROSPECTIVE JUROR BELL: No.
21 THE COURT: You or anyone closely associated with
22 you ever been arrested for a crime?
23 PROSPECTIVE JUROR BELL: No.
24 THE COURT: Ever serve on a jury before?
25 PROSPECTIVE JUROR BELL: No.

1 THE COURT: You going to follow my instructions?
2 PROSPECTIVE JUROR BELL: Mm-hmm.
3 THE COURT: Is that yes?
4 PROSPECTIVE JUROR BELL: Yes. Sorry.
5 THE COURT: That's all right. You'll hear me with a
6 lot of witnesses and I -- they drive you crazy, but you know,
7 you have to say yes or no, but we won't go into that. That's
8 no --
9 You understand that this case could be divided into
10 two phases, one we call -- or call the trial phase. You
11 understand that?
12 PROSPECTIVE JUROR BELL: Yes.
13 THE COURT: At the trial phase you'll hear
14 testimony, you'll hear witnesses, and closing arguments, and
15 you -- I'll give you the instructions, and if you determine
16 the defendant is not guilty, fine; or guilty of a lesser
17 crime, fine. If and only if you find that the defendant is
18 guilty of first degree murder then the penalty phase kicks in.
19 Do you understand that?
20 PROSPECTIVE JUROR BELL: Yes.
21 THE COURT: And then the jury determines punishment,
22 do you understand that?
23 PROSPECTIVE JUROR BELL: Yes.
24 THE COURT: And there's three possible options; life
25 with the possibility of parole; life without the possibility

1 of parole; or imposition of the death penalty. Do you
2 understand that?

3 PROSPECTIVE JUROR BELL: Yes.

4 THE COURT: And sitting here now, you could consider
5 each option and determine what the -- the option you feel is
6 appropriate, can't you?

7 PROSPECTIVE JUROR BELL: Yes.

8 THE COURT: Is there any reason you couldn't be a
9 fair and impartial juror in this case?

10 PROSPECTIVE JUROR BELL: No.

11 THE COURT: Thank you very much.

12 Questions, pass for cause?

13 MR. SCHWARTZ: Just briefly, Your Honor.

14 Good morning, Ms. Bell.

15 PROSPECTIVE JUROR BELL: Good morning.

16 MR. SCHWARTZ: Judge Bonaventure asked you some
17 questions about the death penalty, that you can consider each
18 of the three options should you have to do so as a member of
19 the jury.

20 PROSPECTIVE JUROR BELL: Mm-hmm.

21 MR. SCHWARTZ: Now considering them is one thing,
22 but if you felt after hearing all the evidence and you
23 returned a verdict of guilty of first degree murder then we go
24 into the penalty phase of the trial. If after hearing all the
25 evidence at the penalty phase and you felt that the only

1 appropriate verdict for the death of these two young men was
2 the death penalty could you vote for the death penalty? Could
3 you come into this courtroom and announce a verdict of death
4 in front of this defendant?
5 PROSPECTIVE JUROR BELL: Yes, I could.
6 MR. SCHWARTZ: Thank you very much.
7 Pass to cause, Your Honor.
8 THE COURT: Thank you. Want to say anything or pass
9 for cause?
10 MR. LaPORTA: Thank you, Judge.
11 Good morning Ms. Bell.
12 PROSPECTIVE JUROR BELL: Good morning.
13 MR. LaPORTA: Like Mr. Hannigan you answered some
14 questions in the area of attitudes toward the death penalty
15 where you said you were unsure about whether you could
16 consider the defendant's background information, which has
17 already been explained to you and all three possible
18 punishments. Can you explain that?
19 PROSPECTIVE JUROR BELL: I think I would have to
20 hear what the background information specifically was,
21 depending on, you know, if it was just the education or if it
22 was actually the person's mental stability. It would depend
23 on specifically what the background information was.
24 MR. LaPORTA: But you will listen to that? I mean,
25 that's --

1 PROSPECTIVE JUROR BELL: Oh, sure.
2 MR. LaPORTA: -- that's mitigating evidence that if
3 he is convicted of first degree murder that we would ask you
4 to listen to, that background information.
5 PROSPECTIVE JUROR BELL: I understand that.
6 MR. LaPORTA: And the State would be presenting
7 their own background information.
8 PROSPECTIVE JUROR BELL: Okay.
9 MR. LaPORTA: All right, now, the prosecutor asked
10 you asked questions about whether or not you could return a
11 verdict of death, let me ask you this? You've read the
12 synopsis in this particular case.
13 PROSPECTIVE JUROR BELL: Mm-hmm.
14 MR. LaPORTA: He's charged with the double homicide
15 of two individuals.
16 PROSPECTIVE JUROR BELL: Mm-hmm.
17 MR. LaPORTA: Honestly do you believe that you
18 could, after finding somebody guilty of first degree murder,
19 they intended to do exactly what they did, do you believe that
20 you could consider life with or without the possibility of
21 parole equally?
22 PROSPECTIVE JUROR BELL: Yes, I could.
23 MR. LaPORTA: Okay. Just one last area. I mean, I
24 don't bring this out to embarrass you, but you answered some
25 questions about attorneys --

1 PROSPECTIVE JUROR BELL: I remember those questions.
2 MR. LaPORTA: -- and you stated defense attorneys,
3 although most of your experience with them comes from
4 television that --
5 PROSPECTIVE JUROR BELL: All of my experience comes
6 from television.
7 MR. LaPORTA: All right. You wonder sometimes how
8 they sleep at night.
9 PROSPECTIVE JUROR BELL: Yes.
10 MR. LaPORTA: Do you have a negative viewpoint of
11 defense attorneys?
12 PROSPECTIVE JUROR BELL: No, I was just answering
13 the question as honestly as I could and really all of my
14 opinions strictly come from television --
15 MR. LaPORTA: Okay.
16 PROSPECTIVE JUROR BELL: -- as far as movies or TV
17 shows and honestly depending what show you watch, the defense
18 can be the bad guy or the prosecutor, so that was really where
19 I got my opinion from.
20 MR. LaPORTA: All right, well, let's ask -- let me
21 ask you about that opinion. As a result of -- forget the
22 basis from which you have formed your opinion, okay?
23 Television. Is your opinion of defense attorneys a negative
24 one at this juncture?
25 PROSPECTIVE JUROR BELL: No.

1 MR. LaPORTA: So that your opinion of Ms. McMahon
2 and I is not such that it would affect your deliberations with
3 Mr. Thomas?
4 PROSPECTIVE JUROR BELL: No, it's not.
5 MR. LaPORTA: You hold us in the same esteem as
6 these two fine gentlemen?
7 PROSPECTIVE JUROR BELL: Yes, I do.
8 MR. LaPORTA: Pass for cause, Your Honor.
9 THE COURT: All right. Juror Number 374, Ms.
10 Woodward is pretty sick out there. Any objection we excuse
11 her? State?
12 MR. SCHWARTZ: No, Your Honor.
13 THE COURT: Defense?
14 MR. LaPORTA: The number, Judge?
15 THE COURT: 374.
16 MR. LaPORTA: No objections.
17 THE COURT: Thank you. You could tell her to report
18 back to Room 1013.
19 Is it Ms. Foster? Where were we?
20 PROSPECTIVE JUROR FOSTER: Yes.
21 THE COURT: Ms. Foster, how long you been in Las
22 Vegas?
23 PROSPECTIVE JUROR FOSTER: About nine years now.
24 THE COURT: And what do you do for a living?
25 PROSPECTIVE JUROR FOSTER: I'm sorry?

1 THE COURT: What do you do for a living?
2 PROSPECTIVE JUROR FOSTER: Oh, my husband and I have
3 our own business, The Mobile Welding. He --
4 THE COURT: Welding?
5 PROSPECTIVE JUROR FOSTER: He does the welding part
6 and I run the office. We have our office in the home.
7 THE COURT: All right. So your husband works with
8 you in that, is that correct? And do you have any children?
9 PROSPECTIVE JUROR FOSTER: Two daughters.
10 THE COURT: Two young to work?
11 PROSPECTIVE JUROR FOSTER: No, the oldest one is in
12 the army. She's a truck driver. The nineteen year old is a
13 bank teller at Well's Fargo Bank.
14 THE COURT: Great. Have you ever been in the
15 military?
16 PROSPECTIVE JUROR FOSTER: No.
17 THE COURT: Are you acquainted with anybody in law
18 enforcement?
19 PROSPECTIVE JUROR FOSTER: By marriage I'm related
20 to a Henderson Police Officer.
21 THE COURT: By marriage, they're married to your --
22 PROSPECTIVE JUROR FOSTER: Yeah, distantly. My
23 cousin, he's my cousin's nephew.
24 THE COURT: All right. The fact that you have some
25 relation to police officer in Henderson that's not going to

1 affect your deliberation in this case?
2 PROSPECTIVE JUROR FOSTER: No.
3 THE COURT: You're not to give greater weight or
4 lesser weight to a police officer's testimony simply because
5 they're a police officer. You understand that?
6 PROSPECTIVE JUROR FOSTER: Yes.
7 THE COURT: Have you ever been a victim of a crime?
8 PROSPECTIVE JUROR FOSTER: Yes, house burglary.
9 THE COURT: Did they catch the individual?
10 PROSPECTIVE JUROR FOSTER: No.
11 THE COURT: You never had to appear in court?
12 PROSPECTIVE JUROR FOSTER: No.
13 THE COURT: But that's not going to affect your
14 deliberations, is it?
15 PROSPECTIVE JUROR FOSTER: No.
16 THE COURT: Have you or anyone closely associated
17 with you ever been arrested for a crime?
18 PROSPECTIVE JUROR FOSTER: No.
19 THE COURT: Ever serve on a jury before?
20 PROSPECTIVE JUROR FOSTER: No, I haven't.
21 THE COURT: Will you be able to follow my
22 instructions? And if you're picked as juror the first phase
23 would be the trial phase is what we call it and if the jury
24 finds the defendant not guilty or lesser included that
25 completes the case. If, however, if the jury finds the

1 defendant guilty of first degree murder then that penalty
2 phase kicks in. Do you understand that?
3 PROSPECTIVE JUROR FOSTER: Yes.
4 THE COURT: And then the jury sets the punishment
5 and the three options are life with the possibility of parole,
6 life without the possibility of parole, or the imposition of
7 the death penalty. You understand that?
8 PROSPECTIVE JUROR FOSTER: Yes, I do.
9 THE COURT: And could you keep an open mind on all
10 of those options and consider all three of those options?
11 PROSPECTIVE JUROR FOSTER: No.
12 THE COURT: Why do you say no?
13 PROSPECTIVE JUROR FOSTER: I don't believe that we
14 have the right to determine to -- determine the -- to take the
15 life of another individual.
16 THE COURT: Is that a religious thing you're going
17 on or something --
18 PROSPECTIVE JUROR FOSTER: I'm not real religious,
19 but I just believe that God's the only one that has the right
20 to make that decision.
21 THE COURT: So, it's not any religious -- it's just
22 something that you feel is in your mind, that no matter what
23 you couldn't -- you couldn't at least impose the death
24 penalty? Is that correct?
25 PROSPECTIVE JUROR FOSTER: Yes, I know I couldn't.

1 THE COURT: All right. State?
2 MR. ROGER: Challenge for cause.
3 MR. SCHWARTZ: Challenge.
4 THE COURT: Defense?
5 MS. McMAHON: No, Your Honor.
6 THE COURT: You have no objection to that?
7 MS. McMAHON: We have no questions. No objections
8 to that challenge.
9 THE COURT: Please report back to 1013.
10 The clerk call another prospective jury -- juror?
11 THE CLERK: Marie Desiderio?
12 THE COURT: All right, Marie, take that same seat up
13 there, all right? How long you been in Las Vegas?
14 PROSPECTIVE JUROR DESIDERIO: Just about ten month.
15 THE COURT: And where did you come from?
16 PROSPECTIVE JUROR DESIDERIO: New York.
17 THE COURT: And what did you do in New York?
18 PROSPECTIVE JUROR DESIDERIO: I worked for a medical
19 office.
20 THE COURT: All right, and then you decided to move
21 here ten months ago?
22 PROSPECTIVE JUROR DESIDERIO: Yeah.
23 THE COURT: And what do you do here now as far as
24 work?
25 PROSPECTIVE JUROR DESIDERIO: Okay, I work for a

1 casino, I'm in human resources. Personnel --
2 THE COURT: At what casino?
3 PROSPECTIVE JUROR DESIDERIO: Primadonna.
4 THE COURT: Are you married?
5 PROSPECTIVE JUROR DESIDERIO: Yes, I am.
6 THE COURT: Does your husband work?
7 PROSPECTIVE JUROR DESIDERIO: Yes.
8 THE COURT: What does he do?
9 PROSPECTIVE JUROR DESIDERIO: He just started a job
10 with the -- a new newspaper, The North Tribune -- Sunday
11 Tribune.
12 THE COURT: Okay.
13 PROSPECTIVE JUROR DESIDERIO: It's a brand new
14 newspaper.
15 THE COURT: Okay. Do you have any children?
16 PROSPECTIVE JUROR DESIDERIO: I have three children.
17 my oldest has -- she's out here with us. She has a little job
18 for a car carrier company. My other two are back home, back
19 East. One is a language teacher and my son just got out of
20 the Navy.
21 THE COURT: All right. Have you ever been in the
22 military?
23 PROSPECTIVE JUROR DESIDERIO: No.
24 THE COURT: You acquainted with anybody in law
25 enforcement?

1 PROSPECTIVE JUROR DESIDERIO: No.
2 THE COURT: Ever been a victim of a crime?
3 PROSPECTIVE JUROR DESIDERIO: Just house burglary.
4 THE COURT: Ever catch the individual?
5 PROSPECTIVE JUROR DESIDERIO: No.
6 THE COURT: That's not going to affect your
7 deliberation here?
8 PROSPECTIVE JUROR DESIDERIO: No.
9 THE COURT: Have you or anyone closely associated
10 with you ever been arrested for a crime?
11 PROSPECTIVE JUROR DESIDERIO: No.
12 THE COURT: You ever serve on a jury before?
13 PROSPECTIVE JUROR DESIDERIO: Only summoned, never
14 served.
15 THE COURT: Okay. Are you going to be able to
16 follow my instructions?
17 PROSPECTIVE JUROR DESIDERIO: Mm-hmm, yes.
18 THE COURT: And again that two phased thing that
19 we've been talking about, the first phase would be the trial
20 phase and if you determine that the defendant is guilty of
21 first degree murder then we go into the second phase. We call
22 it the penalty phase. You understand that?
23 PROSPECTIVE JUROR DESIDERIO: Yes.
24 THE COURT: Then you'd have the option, the jury
25 sets punishment, of life with the possibility of parole, or

1 life without the possibility of parole, or the imposition of
2 the death penalty. Do you understand that?
3 PROSPECTIVE JUROR DESIDERIO: Yes.
4 THE COURT: Could you consider each option and --
5 PROSPECTIVE JUROR DESIDERIO: Yes, I could.
6 THE COURT: -- and determine what is an appropriate
7 punishment in this particular case?
8 PROSPECTIVE JUROR DESIDERIO: Yes, I could.
9 THE COURT: You could. Any reason you couldn't be a
10 fair and impartial juror in this case?
11 PROSPECTIVE JUROR DESIDERIO: No.
12 THE COURT: Thank you very much.
13 Any questions? Pass for cause?
14 MR. SCHWARTZ: Just one, Your Honor.
15 Ma'am, do you understand the questions being asked
16 by both counsel and the Judge that the State has the
17 responsibility of proving the defendant guilty beyond a
18 reasonable doubt before we would ask you to return a verdict
19 of guilty?
20 PROSPECTIVE JUROR DESIDERIO: Yes.
21 MR. SCHWARTZ: And do you understand that verdict is
22 the same in all criminal cases regardless of the charge?
23 PROSPECTIVE JUROR DESIDERIO: Yes.
24 MR. SCHWARTZ: So the fact that the defendant is
25 facing a capital murder charge, in other words he's facing

1 potentially the death penalty, the State only has to prove the
2 defendant guilty beyond a reasonable doubt. So would you
3 follow the instructions given to you by the Judge at the
4 conclusion of this trial?

5 PROSPECTIVE JUROR DESIDERIO: Yes, I would.

6 MR. SCHWARTZ: And would you hold us to a higher
7 standing or a standard that is in compliance with the Judge's
8 instructions? What the Judge instructs you to do?

9 PROSPECTIVE JUROR DESIDERIO: Exactly.

10 MR. SCHWARTZ: Thank you.

11 Pass for cause, Your Honor.

12 THE COURT: All right, thank you.

13 Questions, pass for cause?

14 MR. LaPORTA: Thank you, Judge. Yes, I have a few.
15 Good morning.

16 PROSPECTIVE JUROR DESIDERIO: Good morning.

17 MR. LaPORTA: Ms. Desiderio, is it?

18 PROSPECTIVE JUROR DESIDERIO: Yes.

19 MR. LaPORTA: Questions that you had in the area of
20 attitudes regarding the death penalty. And this is most
21 important to all the parties here. Okay? There is the
22 penalty phase as the Judge told you. And you get to that
23 phase if you, during the guilt [sic] phase, the defendant is
24 unfortunate enough to be found guilty of first degree murder,
25 and that's the only way that you get to that phase. In your

1 questions though, and realizing there's no such thing as a
2 wrong or a right answer here, just the answer according to
3 your attitudes.

4 The question was, without having heard any evidence
5 in this case, what are your general thoughts about the benefit
6 of imposing a sentence of life with the possibility of parole
7 on a person convicted of murder in the first degree? And your
8 answer was, this punishment should not apply for a convicted
9 murderer. Not severe enough if the evidence prevails.

10 I'm assuming and you correct me if I'm wrong, that
11 if the evidence prevails means if you find him guilty of first
12 degree murder, he intended to do exactly what the State
13 alleges he did it, and that was murder two people, intending
14 to do so.

15 PROSPECTIVE JUROR DESIDERIO: That's correct.

16 MR. LaPORTA: Is that correct?

17 PROSPECTIVE JUROR DESIDERIO: That's correct.

18 MR. LaPORTA: Is that what you meant by if the
19 evidence prevails?

20 PROSPECTIVE JUROR DESIDERIO: Mm-hmm.

21 MR. LaPORTA: So, I'll ask you the question one more
22 time that's already been asked of you. If, according to the
23 synopsis of this case, you find that Mr. Thomas is guilty of
24 two counts of first degree murder, are you personally able to
25 consider, equally with the other two forms of punishment, life

1 with the possibility of parole?
2 PROSPECTIVE JUROR DESIDERIO: Yes.
3 MR. LaPORTA: All right. Can you explain what you
4 meant by this should not apply, then?
5 PROSPECTIVE JUROR DESIDERIO: I probably just didn't
6 understand the question --
7 MR. LaPORTA: Okay. You understand --
8 PROSPECTIVE JUROR DESIDERIO: -- as well as I do
9 now.
10 MR. LaPORTA: And you understand that now, that we
11 have somewhat educated you --
12 PROSPECTIVE JUROR DESIDERIO: Absolutely.
13 MR. LaPORTA: -- that you must consider all three
14 forms of punishment equally going into the penalty phase?
15 PROSPECTIVE JUROR DESIDERIO: Yes.
16 MR. LaPORTA: All right. And you're able to do
17 that?
18 PROSPECTIVE JUROR DESIDERIO: Yes.
19 MR. LaPORTA: Pass for cause, Your Honor.
20 THE COURT: All right, Mr. LaPorta.
21 Mr. Wood, how long you been in Las Vegas?
22 PROSPECTIVE JUROR WOOD: Nineteen years.
23 THE COURT: And what do you do for a living, sir?
24 PROSPECTIVE JUROR WOOD: I work for Nevada Power.
25 THE COURT: Are you married?

1 PROSPECTIVE JUROR WOOD: I'm in the process of a
2 divorce right now.
3 THE COURT: All right. Children?
4 PROSPECTIVE JUROR WOOD: Twelve and fifteen.
5 THE COURT: Okay. Have you ever been in the
6 military?
7 PROSPECTIVE JUROR WOOD: No, sir.
8 THE COURT: Are you acquainted with anybody in law
9 enforcement?
10 PROSPECTIVE JUROR WOOD: No, sir.
11 THE COURT: Have you ever been a victim of a crime?
12 PROSPECTIVE JUROR WOOD: No.
13 THE COURT: Have you or anyone closely associated
14 with you ever been arrested for a crime?
15 PROSPECTIVE JUROR WOOD: Not that I know of.
16 THE COURT: You ever serve on a jury before?
17 PROSPECTIVE JUROR WOOD: No, sir.
18 THE COURT: You understand that Mr. Marlo Thomas
19 sits here -- he's brought to District Court by way of an
20 information and it's a mere charging document, you understand
21 that?
22 PROSPECTIVE JUROR WOOD: Yes, I do.
23 THE COURT: And Mr. Thomas is presumed to be
24 innocent at this point. You understand that?
25 PROSPECTIVE JUROR WOOD: That's correct.

1 THE COURT: And it's incumbent upon the State of
2 Nevada to prove him guilty beyond a reasonable doubt.
3 PROSPECTIVE JUROR WOOD: Yes, sir.
4 THE COURT: If you feel, and only if you feel that
5 the State has proven beyond a reasonable doubt that he's
6 guilty and he's guilty of first degree murder, then the
7 penalty phase kicks in. You understand that?
8 PROSPECTIVE JUROR WOOD: Yes, sir.
9 THE COURT: And at the penalty phase it's incumbent
10 upon the jury to determine punishment, all right?
11 PROSPECTIVE JUROR WOOD: Correct.
12 THE COURT: And you have three options; life with
13 the possibility of parole, life without the possibility of
14 parole or imposition of the death penalty. You understand
15 that?
16 PROSPECTIVE JUROR WOOD: Yes, sir.
17 THE COURT: And are you in such a state of mind that
18 you could equally decide what the appropriate punishment is?
19 PROSPECTIVE JUROR WOOD: I believe so.
20 THE COURT: Any reason you couldn't be a fair and
21 impartial juror in this case?
22 PROSPECTIVE JUROR WOOD: No, sir.
23 THE COURT: Thank you very much, sir.
24 Questions, pass for cause?
25 MR. SCHWARTZ: Pass for cause, Your Honor.

1 THE COURT: Thank you.
2 Questions, pass for cause?
3 MR. LaPORTA: Mr. Wood, good morning. Do you
4 believe in your mind that after having sat through a guilt
5 phase and if you find Mr. Thomas guilty of a double homicide,
6 first degree, do you believe that you could come back during a
7 penalty phase and truly consider one of the lives, with or
8 without the possibility of parole?
9 PROSPECTIVE JUROR WOOD: If circumstances mitigated
10 that.
11 MR. LaPORTA: So you will, we have your assurances
12 that you will listen to the mitigating evidence that both the
13 defense and the prosecution will present in this case?
14 PROSPECTIVE JUROR WOOD: Yes.
15 MR. LaPORTA: Well, maybe you could explain one last
16 thing. Attitudes towards attorneys, you said defense
17 attorneys were trying to make a living and public defenders,
18 of which we both are, we're really trying to make a living.
19 PROSPECTIVE JUROR WOOD: Isn't that the natural
20 progression, you start out as a public defendant and then move
21 to the defense side.
22 MR. LaPORTA: Or just the reverse.
23 PROSPECTIVE JUROR WOOD: The same thing.
24 MR. LaPORTA: Thank you. Pass for cause, Your
25 Honor.

1 THE COURT: Pass for cause then?
2 Well, Mr. MacKenzie, how long have you been in Las
3 Vegas?
4 PROSPECTIVE JUROR MacKENZIE: Fifteen years, Your
5 Honor.
6 THE COURT: What do you do for a living?
7 PROSPECTIVE JUROR MacKENZIE: I work for the Las
8 Vegas Metro Police Department.
9 THE COURT: That's where you're a civil employee
10 there. What do you? What are your duties then?
11 PROSPECTIVE JUROR MacKENZIE: I'm in the radio
12 communications 911 building; take care of all the equipment.
13 THE COURT: All right. How long have you been doing
14 that?
15 PROSPECTIVE JUROR MacKENZIE: For thirteen years.
16 THE COURT: Of course, in that capacity, I'm sure
17 you're acquainted with a lot of police officers?
18 PROSPECTIVE JUROR MacKENZIE: Yes. Many of them on
19 the trial, too.
20 THE COURT: At this trial? Like who? Who do you
21 know here?
22 PROSPECTIVE JUROR MacKENZIE: Dave Lewis, I worked
23 personally with a few years, before he became a police officer
24 down there. And Terry Mayo used to have been the captain.
25 THE COURT: Okay. The fact that you know some

1 police officers and perhaps people -- I don't know, if they're
2 going to testify here, but they're on the -- they're on the
3 information endorsed. Is that going to affect your
4 deliberation, the fact that you know these police officers?

5 PROSPECTIVE JUROR MacKENZIE: I'm unsure on that.
6 How could I -- how could I say? I know them --

7 THE COURT: Well, you just have to -- I mean what
8 you -- what would I -- all I could do is tell you what you
9 should do is that you're just to judge this case solely upon
10 what you hear from the witness stand. You're to set aside
11 people you know, you're just to say, hey, I've got a job to
12 do, I'm a -- an American citizen, it's my duty to be a juror,
13 I have to -- I have to exercise my obligations, and I got to
14 hear the witness stand, and I've got to determine, just by
15 what you hear from the evidence, whether or not the defendant
16 is guilty or not guilty. That's what you -- that's what the
17 law is, you know.

18 PROSPECTIVE JUROR MacKENZIE: But it could influence
19 me, that's all I can say, Your Honor, you know, being that --

20 THE COURT: Well, could you try and do that, though,
21 just judge this --

22 PROSPECTIVE JUROR MacKENZIE: I could try, yes.

23 THE COURT: -- case by what you hear from the
24 witness stand?

25 PROSPECTIVE JUROR MacKENZIE: I've served on a trial

1 before, a civil trial.
2 THE COURT: Pardon?
3 PROSPECTIVE JUROR MacKENZIE: I've served on a trial
4 before, a civil trial in that case.
5 THE COURT: All right. Will you be able to --- have
6 you ever been in the military?
7 PROSPECTIVE JUROR MacKENZIE: Yes, four years in the
8 Navy, Your Honor.
9 THE COURT: All right. Anybody that's in the
10 military -- you're the first that said you're in the military.
11 Oh, I just follow it up with another question that -- you were
12 in the military, what branch were you in by the way?
13 PROSPECTIVE JUROR MacKENZIE: The Navy.
14 THE COURT: And how many years were you in there?
15 PROSPECTIVE JUROR MacKENZIE: Four years.
16 THE COURT: Okay. And you didn't have anything to
17 do court martialing or military police, did you?
18 PROSPECTIVE JUROR MacKENZIE: No, Your Honor.
19 THE COURT: Oh. All right. You ever been the
20 victim of a crime?
21 PROSPECTIVE JUROR MacKENZIE: Just burglary, about
22 nine years ago.
23 THE COURT: They never caught the individual?
24 PROSPECTIVE JUROR MacKENZIE: No.
25 THE COURT: Have you or anyone associated with you

1 ever been arrested for a crime?
2 PROSPECTIVE JUROR MacKENZIE: No, Your Honor.
3 THE COURT: Ever serve on a jury before, that civil
4 one? How long ago was that?
5 PROSPECTIVE JUROR MacKENZIE: It was about -- oh,
6 six years ago or so.
7 THE COURT: Here in this District Court here?
8 PROSPECTIVE JUROR MacKENZIE: Yes.
9 THE COURT: You were picked as a juror?
10 PROSPECTIVE JUROR MacKENZIE: Yes.
11 THE COURT: Were you picked as foreman?
12 PROSPECTIVE JUROR MacKENZIE: No.
13 THE COURT: You deliberated the case?
14 PROSPECTIVE JUROR MacKENZIE: The jury got dismissed
15 or --
16 THE COURT: What?
17 PROSPECTIVE JUROR MacKENZIE: -- they came to an
18 agreement.
19 THE COURT: Okay. So you never had --
20 PROSPECTIVE JUROR MacKENZIE: No.
21 THE COURT: -- to reach a verdict, is that correct?
22 PROSPECTIVE JUROR MacKENZIE: No, Your Honor.
23 THE COURT: Okay. This is the two-phase aspect of
24 this -- of the possible case here.
25 PROSPECTIVE JUROR MacKENZIE: I understand, Your

1 Honor.

2 THE COURT: The first phase would be the trial
3 phase. If and only if the jury finds the defendant guilty of
4 first degree murder, then it goes into the penalty phase. You
5 understand that?

6 PROSPECTIVE JUROR MACKENZIE: I understand.

7 THE COURT: If the jury does not find the defendant
8 guilty of first degree murder or perhaps a lesser crime, then
9 it doesn't go into the penalty phase. You understand that?

10 PROSPECTIVE JUROR MACKENZIE: I understand it, Your
11 Honor.

12 THE COURT: But only if it goes into the penalty
13 phase, then you have those options; life with the possibility
14 of parole, life without the possibility of parole, and the
15 imposition of the death penalty. Do you understand that?

16 PROSPECTIVE JUROR MACKENZIE: Yes, I do.

17 THE COURT: Could you equally consider each of those
18 options?

19 PROSPECTIVE JUROR MACKENZIE: Yes, Your Honor, I
20 believe I could do that.

21 THE COURT: All right. Thank you very much.
22 Questions, pass for cause?

23 MS. McMAHON: I would like to --

24 THE COURT: Well, I didn't -- I'll get to you in
25 minute, Ms. McMahon. I just want to get to the State first.

1 you know.

2 MR. ROGER: Good afternoon or good morning, Mr.

3 MacKenzie. With regard to your function and determining

4 punishment, do you feel that you're well suited to make that

5 type of decision?

6 PROSPECTIVE JUROR MacKENZIE: Not the death penalty.

7 MR. ROGER: What are you feelings about the death

8 penalty?

9 PROSPECTIVE JUROR MacKENZIE: I do not feel to

10 convicting another human being to death and I'm against that.

11 MR. ROGER: There are some people who believe as you

12 do and that's certainly not a right or wrong answer. Are you

13 telling us that if the circumstances were appropriate you

14 could not vote for the death penalty?

15 PROSPECTIVE JUROR MacKENZIE: That's right.

16 MR. ROGER: Thank you. Challenge for cause.

17 THE COURT: Well, I just asked you, sir. I said

18 could you equally consider the options?

19 PROSPECTIVE JUROR MacKENZIE: I was trying to

20 explain that here --

21 THE COURT: I mean that's the question I asked,

22 could you -- and you said, yes.

23 PROSPECTIVE JUROR MacKENZIE: I misunderstood, Your

24 Honor, I'm sorry. I didn't understand your question, I'm

25 sorry.

1 THE COURT: Does the defense want to say anything to
2 the challenge for cause?
3 MS. McMAHON: No, Your Honor.
4 MR. LaPORTA: No, no objection.
5 THE COURT: Please report back to room 1013. The
6 clerk, draw another prospective juror.
7 THE CLERK: Sharyn Brown.
8 THE COURT: Sharyn Brown.
9 PROSPECTIVE JUROR BROWN: Yes.
10 THE COURT: Take that same seat, Ms. Brown. How
11 long have you been in Las Vegas?
12 PROSPECTIVE JUROR BROWN: Twenty-eight years.
13 THE COURT: Where did you -- how many years?
14 PROSPECTIVE JUROR BROWN: Twenty-eight.
15 THE COURT: Oh, a long time resident. All right.
16 What do you do for a living, ma'am?
17 PROSPECTIVE JUROR BROWN: I'm a housewife.
18 THE COURT: And what does your husband do?
19 PROSPECTIVE JUROR BROWN: He's an attorney.
20 THE COURT: What's his name?
21 PROSPECTIVE JUROR BROWN: Jay.
22 THE COURT: Jay Brown?
23 PROSPECTIVE JUROR BROWN: Right.
24 THE COURT: All right. He's mostly a civil lawyer,
25 I imagine, right?

1 PROSPECTIVE JUROR BROWN: Commercial.
2 THE COURT: Commercial, civil lawyers -- I don't
3 seem him practice criminal law too much.
4 PROSPECTIVE JUROR BROWN: No.
5 THE COURT: The fact that you have an attorney
6 that's a husband, that's not going to affect the deliberation
7 in this case, is it?
8 PROSPECTIVE JUROR BROWN: No.
9 THE COURT: Do you have any children?
10 PROSPECTIVE JUROR BROWN: Yes, I have three.
11 THE COURT: What do they do for a living if they're
12 older --
13 PROSPECTIVE JUROR BROWN: The oldest is an academic
14 counselor at UNLV. My second daughter is a law student in San
15 Diego. My youngest is a law student in San Francisco and is
16 working this summer as an extern for Judge Gates.
17 THE COURT: Okay. Were you ever in the military?
18 PROSPECTIVE JUROR BROWN: No.
19 THE COURT: Are you acquainted with anybody in law
20 enforcement?
21 PROSPECTIVE JUROR BROWN: My second daughter was a
22 police officer between college and law school.
23 THE COURT: Here in town?
24 PROSPECTIVE JUROR BROWN: The U.S. Capital Police.
25 THE COURT: Yeah. The fact that your second

1 daughter was a police officer for a short time, that's not
2 going to affect your deliberation in this?

3 PROSPECTIVE JUROR BROWN: No.

4 THE COURT: You understand you're not to give
5 greater weight or lesser weight to a police officer's
6 testimony simply because they're a police officer?

7 PROSPECTIVE JUROR BROWN: Right.

8 THE COURT: You ever been a victim of a crime?

9 PROSPECTIVE JUROR BROWN: Yes, I have.

10 THE COURT: What was that?

11 PROSPECTIVE JUROR BROWN: I've had several -- well,
12 a number of burglaries, but the major problem was I had a home
13 invasion robbery.

14 THE COURT: All right. How long ago was that?

15 PROSPECTIVE JUROR BROWN: Five years ago.

16 THE COURT: And you were in the home when that
17 happened?

18 PROSPECTIVE JUROR BROWN: Yes, I was.

19 THE COURT: All right. Probably a traumatic
20 experience. Anybody get hurt?

21 PROSPECTIVE JUROR BROWN: No.

22 THE COURT: All right. Did they ever catch the
23 individuals?

24 PROSPECTIVE JUROR BROWN: Yes, they did.

25 THE COURT: Did you ever have to appear in Court?

1 PROSPECTIVE JUROR BROWN: No.
2 THE COURT: All right. Was it resolved?
3 PROSPECTIVE JUROR BROWN: Yes, it was.
4 THE COURT: All right. The fact that you had that
5 very unpleasant experience, that's not going to affect your
6 deliberation in this case, is it?
7 PROSPECTIVE JUROR BROWN: I don't think so.
8 THE COURT: All right. You -- were you ever closely
9 associated, or have you ever been arrested for a crime?
10 PROSPECTIVE JUROR BROWN: No.
11 THE COURT: Did you ever serve on a jury before?
12 PROSPECTIVE JUROR BROWN: Yes.
13 THE COURT: How many times? One?
14 PROSPECTIVE JUROR BROWN: Once.
15 THE COURT: Criminal or civil?
16 PROSPECTIVE JUROR BROWN: Criminal.
17 THE COURT: How long ago was this?
18 PROSPECTIVE JUROR BROWN: Seven, eight years ago.
19 THE COURT: What was the charge, do you remember?
20 PROSPECTIVE JUROR BROWN: Murder.
21 THE COURT: Were you picked as a juror?
22 PROSPECTIVE JUROR BROWN: Yes, I was.
23 THE COURT: Were you picked as foreperson?
24 PROSPECTIVE JUROR BROWN: No.
25 THE COURT: Without telling me what the verdict was,

1 did the jury reach a verdict?
2 PROSPECTIVE JUROR BROWN: Yes, we did.
3 THE COURT: And what was the name of that defendant,
4 if you remember?
5 PROSPECTIVE JUROR BROWN: I really don't remember.
6 THE COURT: If you don't remember, you don't
7 remember. But that was about six, eight years ago?
8 PROSPECTIVE JUROR BROWN: Oh, easy, yes.
9 THE COURT: All right. The fact that you have that
10 prior murder jury experience, that's not going to effect your
11 deliberation in this case, is it?
12 PROSPECTIVE JUROR BROWN: No, sir.
13 THE COURT: Was that a death penalty case?
14 PROSPECTIVE JUROR BROWN: Yes, it was.
15 THE COURT: All right. Again, if you find the
16 defendant guilty of first degree murder, then it kicks into
17 that penalty phase. Do you understand that?
18 PROSPECTIVE JUROR BROWN: Right.
19 THE COURT: Then you have the option of setting
20 punishment. It's up to the jury to set punishment, right?
21 Life with the possibility of parole, life without the
22 possibility of parole, the imposition of the death penalty.
23 Do you understand that?
24 PROSPECTIVE JUROR BROWN: Yes, I do.
25 THE COURT: Could you equally consider each option?

1 PROSPECTIVE JUROR BROWN: I think so.
2 THE COURT: Any reason you couldn't be a fair and
3 impartial juror in this case?
4 PROSPECTIVE JUROR BROWN: Not that I know of.
5 THE COURT: Thank you, very much. Questions, pass
6 for --
7 MR. ROGER: Thank you, Judge. Good morning, Mrs.
8 Brown. You were previously selected as a juror in a murder
9 case, right?
10 PROSPECTIVE JUROR BROWN: Right.
11 MR. ROGER: Any of the attorneys the same?
12 PROSPECTIVE JUROR BROWN: No, sir.
13 MR. ROGER: Were you asked to determine punishment
14 in that particular case?
15 PROSPECTIVE JUROR BROWN: Yes, we were.
16 MR. ROGER: How did you feel about being asked to
17 determine whether a person lives or dies?
18 PROSPECTIVE JUROR BROWN: Well, I feel that it's
19 just our obligation here. It's part of the legal system -- it
20 was just what we had to do.
21 MR. ROGER: You indicated that you found that it was
22 positive experience?
23 PROSPECTIVE JUROR BROWN: Yes, I did.
24 MR. ROGER: In what way?
25 PROSPECTIVE JUROR BROWN: Well, I thought I learned

1 a lot about the legal system and I just thought it was
2 informational and it was positive.

3 MR. ROGER: Your husband is a former law partner of
4 some criminal defense attorneys here in town.

5 PROSPECTIVE JUROR BROWN: Yes, he is.

6 MR. ROGER: You socialize with them occasionally?

7 PROSPECTIVE JUROR BROWN: Occasionally.

8 MR. ROGER: Did you ever discuss your experience in
9 this death penalty case with these defense attorneys after the
10 verdict?

11 PROSPECTIVE JUROR BROWN: The defense attorneys in
12 the case that I served --

13 MR. ROGER: No, I'm sorry.

14 PROSPECTIVE JUROR BROWN: -- or the ones that I
15 knew?

16 MR. ROGER: Right.

17 PROSPECTIVE JUROR BROWN: I don't think so.

18 MR. ROGER: Do you think that you would have had any
19 problem in discussing that with them?

20 PROSPECTIVE JUROR BROWN: No, I don't.

21 MR. ROGER: Thank you. I pass for cause.

22 THE COURT: Thank you. Questions, pass for cause?

23 MS. McMAHON: I have no questions of Mrs. Brown.
24 Thank you.

25 THE COURT: Pass for cause? All right.

1 Ladies and gentlemen, rather than taking a recess
2 and coming back, let's take our noon recess now. Let's be
3 back about an hour from now, 12:30. And make sure you take
4 the same seats; it's very important you take the same seat.
5 All right? So, look around you, where you are -- and Hank,
6 you might crowd a little more people into them when we come
7 back, if you can fit. You know, make sure they're nice and
8 tight. And we'll see everybody back at 12:30.

9 During this recess, I'm going to just leave and
10 admonish you. Don't converse among yourselves, with anyone
11 else about any subject connected with the trial. Don't read,
12 watch, or listen to any report of or commentary on the trial
13 or any person connected with the trial by any medium of
14 information, including without limitation, newspapers,
15 television, or radio. And don't form or express any opinion
16 on any subject connected with the trial until the close is
17 finally submitted to you. We'll be back at one hour, 12:30.

18 (Court recessed at 11:28 a.m. until 12:30 p.m.)

19 (Prospective Jury is not present)

20 THE COURT: Outside the presence of the jury we've
21 discussed in chambers about the people in the jury had certain
22 problems. Juror Number 317, Felton Cross, we decided not to
23 excuse him until he took the stand. Is that correct?

24 MR. SCHWARTZ: Yes, Your Honor.

25 THE COURT: And Juror Number 385, who has heart

1 disease and he's feeling tremendous pressure, we'll excuse
2 him. Is that correct?
3 MR. LaPORTA: Yes, Your Honor.
4 MS. McMAHON: Yes, Your Honor.
5 THE COURT: And Juror Number 319, Chin Suk Farrell.
6 She has tremendous English problems, she can't understand
7 what's happening, and we'll excuse her, is that correct?
8 MR. SCHWARTZ: Yes, Your Honor.
9 THE COURT: Is that correct, defense?
10 MS. McMAHON: Yes, Your Honor --
11 MR. LaPORTA: Yes, Judge.
12 MS. McMAHON: -- that's correct.
13 THE COURT: And Juror Number 314, Fred Schneiter, he
14 said he had a Family Court matter but I think I'm just going
15 to ask him to continue that so we're not going to excuse him.
16 And Juror Number 375, he recently had surgery and
17 he's under medication. I think we'll excuse him. Is that
18 correct?
19 MR. SCHWARTZ: Yes, Your Honor.
20 MS. McMAHON: Yes, Your Honor.
21 THE COURT: All right. So you got that? This is
22 yes and no.
23 MR. LaPORTA: Yes, Judge. Thank you.
24 THE COURT: All right. We're going to bring in the
25 jury now. Anything else come before the Court, off the

1 record?
2 MR. LaPORTA: No, Judge.
3 MR. ROGER: No, Your Honor.
4 THE COURT: All right.
5 MR. SCHWARTZ: No, Judge.
6 MS. McMAHON: No, Judge.
7 THE COURT: I mean on the record, outside the
8 presence of the jury. Nothing?
9 (The Jury reconvened)
10 THE COURT: I think Ms. Melissa --
11 PROSPECTIVE JUROR JAIME: Jaime.
12 THE COURT: -- Jaime. How long have you been in Las
13 Vegas?
14 PROSPECTIVE JUROR JAIME: About six years.
15 THE COURT: And --
16 PROSPECTIVE JUROR JAIME: Five years.
17 THE COURT: -- about five, six years. Where did you
18 come from?
19 PROSPECTIVE JUROR JAIME: Colorado.
20 THE COURT: And what did you do there as far as work
21 was concerned, if you would?
22 PROSPECTIVE JUROR JAIME: I worked at the U.S.
23 District Court.
24 THE COURT: Doing what?
25 PROSPECTIVE JUROR JAIME: I did -- it was called

1 Central Violations Bureau and it was just handling and
2 processing tickets.

3 THE COURT: Okay. What do you do here now?

4 PROSPECTIVE JUROR JAIME: I work at the Federal
5 Courthouse and I do -- I work the intake window and I back up
6 for the file room and mail and whatever.

7 THE COURT: About how long have you been a federal
8 employee then?

9 PROSPECTIVE JUROR JAIME: Six years.

10 THE COURT: Are you married?

11 PROSPECTIVE JUROR JAIME: Yes.

12 THE COURT: What does your husband do?

13 PROSPECTIVE JUROR JAIME: He's a painter.

14 THE COURT: Children?

15 PROSPECTIVE JUROR JAIME: There's six at home.

16 THE COURT: Too young to work?

17 PROSPECTIVE JUROR JAIME: I'm sorry?

18 THE COURT: Any that work?

19 PROSPECTIVE JUROR JAIME: No, no.

20 THE COURT: No. They're all young, is that correct?

21 PROSPECTIVE JUROR JAIME: Yes.

22 THE COURT: Okay. Have you ever been in the
23 military?

24 PROSPECTIVE JUROR JAIME: No.

25 THE COURT: Are you acquainted with anybody in law

1 enforcement?
2 PROSPECTIVE JUROR JAIME: No.
3 THE COURT: Have you ever been a victim of a crime?
4 PROSPECTIVE JUROR JAIME: Our house was broken in a
5 couple of years ago.
6 THE COURT: Never caught the individuals?
7 PROSPECTIVE JUROR JAIME: No.
8 THE COURT: That's not going to affect your
9 deliberation?
10 PROSPECTIVE JUROR JAIME: No.
11 THE COURT: Have you or anyone closely associated
12 with you ever been arrested for a crime?
13 PROSPECTIVE JUROR JAIME: My husband got a DUI about
14 four years ago.
15 THE COURT: Really? Here in town?
16 PROSPECTIVE JUROR JAIME: Yes.
17 THE COURT: And was it resolved in court --
18 PROSPECTIVE JUROR JAIME: Yeah, he had to go --
19 THE COURT: -- like school or something like that?
20 PROSPECTIVE JUROR JAIME: -- to a couple of
21 different classes.
22 THE COURT: All right. The fact that he had that
23 unpleasant problem, that's not going to affect your
24 deliberation? You don't hold that against the State of
25 Nevada, do you?

1 PROSPECTIVE JUROR JAIME: No.

2 THE COURT: All right. Have you ever served on a
3 jury before?

4 PROSPECTIVE JUROR JAIME: This would be my first
5 time.

6 THE COURT: All right. Will you be able to follow
7 my instructions?

8 PROSPECTIVE JUROR JAIME: Yes.

9 THE COURT: And as I said, if you're picked as a
10 juror, this could be a two-phase trial. In other words, the
11 first phase will be the trial phase. If you find the
12 defendant guilty of some lesser included or not guilty, of
13 course, that completes the case.

14 However, if the jury finds the defendant guilty of
15 first degree murder, then the penalty phase kicks in. And at
16 the penalty phase the jury decides the punishment that should
17 be imposed, either life with the possibility of parole, life
18 without the possibility of parole, or the imposition of the
19 death penalty. Do you understand that?

20 PROSPECTIVE JUROR JAIME: Yes.

21 THE COURT: Could you equally consider each one of
22 these options?

23 PROSPECTIVE JUROR JAIME: Yes.

24 THE COURT: Any reason you couldn't be a fair and
25 impartial juror in this case?

1 PROSPECTIVE JUROR JAIME: No.
2 THE COURT: Thank you very much. Questions, pass
3 for cause?
4 MR. SCHWARTZ: Thank you, Your Honor.
5 Good afternoon. In your questionnaire you
6 indicated, on page 15, when asked about your views in general
7 regarding the death penalty, you said you never thought about
8 it. Do you recall writing that?
9 PROSPECTIVE JUROR JAIME: Yeah.
10 MR. SCHWARTZ: Okay.
11 PROSPECTIVE JUROR JAIME: I just --
12 MR. SCHWARTZ: Go ahead.
13 PROSPECTIVE JUROR JAIME: I just -- I guess I don't
14 really know that much about it --
15 MR. SCHWARTZ: Okay.
16 PROSPECTIVE JUROR JAIME: -- so I couldn't really
17 say. I mean I know you're -- you can be sentenced to death,
18 but then I don't know what all that involves or --
19 MR. SCHWARTZ: Okay. Now, we're not speaking
20 hypothetically. Now, you're going to be -- if you're selected
21 as a juror, you might be in a situation where you're going to
22 determine whether an individual lives or dies. Do you think
23 if you felt that the State had presented enough evidence,
24 where the only appropriate verdict for these two killings was
25 one that warranted the death penalty, could you, yourself,

1 come in and vote death?
2 PROSPECTIVE JUROR JAIME: Yes.
3 MR. SCHWARTZ: Okay. You sure about that?
4 PROSPECTIVE JUROR JAIME: Yeah.
5 MR. SCHWARTZ: Pass for cause, Your Honor.
6 THE COURT: Okay. Questions, pass for cause?
7 MR. LaPORTA: Pass for cause, Your Honor.
8 THE COURT: Thank you. Ms. -- Mr. Lizotte, is it?
9 PROSPECTIVE JUROR LIZOTTE: Yes, sir.
10 THE COURT: How long have you been in Las Vegas?
11 PROSPECTIVE JUROR LIZOTTE: Twenty years, sir.
12 THE COURT: And what do you do for a living?
13 PROSPECTIVE JUROR LIZOTTE: I work for a private
14 contractor at Nellis Air Force Base.
15 THE COURT: All right. Are you married?
16 PROSPECTIVE JUROR LIZOTTE: Yes, sir.
17 THE COURT: Does your wife work?
18 PROSPECTIVE JUROR LIZOTTE: She's a homemaker.
19 THE COURT: Children?
20 PROSPECTIVE JUROR LIZOTTE: Two.
21 THE COURT: What do they do for a living?
22 PROSPECTIVE JUROR LIZOTTE: One's a banker and one's
23 an inmate.
24 THE COURT: All right. You have a son or a daughter
25 that's an inmate?

1 PROSPECTIVE JUROR LIZOTTE: A son.
2 THE COURT: And what was he convicted of?
3 PROSPECTIVE JUROR LIZOTTE: Murder.
4 THE COURT: What's his name?
5 PROSPECTIVE JUROR LIZOTTE: Patrick.
6 THE COURT: Patrick Lizotte?
7 PROSPECTIVE JUROR LIZOTTE: Mm-hmm.
8 THE COURT: How long ago was that?
9 PROSPECTIVE JUROR LIZOTTE: So long I don't remember
10 about it.
11 THE COURT: You don't want to remember?
12 PROSPECTIVE JUROR LIZOTTE: Yeah.
13 THE COURT: Of course, you know we have to go into
14 this --
15 PROSPECTIVE JUROR LIZOTTE: Yes, I know.
16 THE COURT: -- I'm sorry. I mean it's basically --
17 it's a very unfortunate situation that a father's in, that his
18 son was convicted of murder. Is that going to affect your
19 decision in this case?
20 PROSPECTIVE JUROR LIZOTTE: Yes, sir.
21 THE COURT: In what way?
22 PROSPECTIVE JUROR LIZOTTE: I will not stand in
23 judgement of any man or a woman who has a possibility of being
24 in the same place as my son.
25 THE COURT: All right.

1 MR. ROGER: Challenge for cause.
2 THE COURT: Any objection?
3 MR. LaPORTA: No objection, Your Honor.
4 THE COURT: All right. Please report back to room
5 1013. The clerk will call another prospective juror.
6 THE CLERK: Fellton Cross.
7 MR. LaPORTA: Badge number?
8 THE CLERK: 317.
9 THE COURT: All right. Take that same seat there,
10 sir. How long have you been in Las Vegas?
11 PROSPECTIVE JUROR CROSS: Twenty-eight years.
12 THE COURT: What do you do for a living, Mr. Cross?
13 PROSPECTIVE JUROR CROSS: I'm a cook.
14 THE COURT: Where?
15 PROSPECTIVE JUROR CROSS: At -- I've had two jobs,
16 Your Honor. I work at the Texas Hotel and Gambling Hall and I
17 work at New Orleans -- New Orleans.
18 THE COURT: You have two full-time jobs?
19 PROSPECTIVE JUROR CROSS: I just got them, yes, sir.
20 THE COURT: When do you work? When do you have time
21 to do anything.
22 PROSPECTIVE JUROR CROSS: Well, actually I work 2:00
23 to 10:00 at the Texas and --
24 THE COURT: Two in the afternoon until 10:00 at
25 night?

1 PROSPECTIVE JUROR CROSS: And 11:00 to 7:00 in the
2 morning at the New Orleans. So, I just got off and I came
3 here. I've been trying to see you, but --
4 THE COURT: Well, you know, I'm a hard man to see.
5 I'm sorry. But, what -- why did you want to talk to me?
6 PROSPECTIVE JUROR CROSS: Well, to be totally
7 honest, Your Honor, I'm -- I just recently kind of changed my
8 life around with a lot of bad things that was going on in the
9 past and I got saved, you know, as a Baptist and in the Bible
10 it preaches that no man, no matter what, you should -- you
11 can't judge -- you shouldn't judge anyone, no matter what.
12 So, I -- even if I was selected as a juror I wouldn't pass
13 judgement. I wouldn't even comment on it.
14 THE COURT: And your religion tells you that?
15 PROSPECTIVE JUROR CROSS: It's in the Bible, Your
16 Honor. It says --
17 THE COURT: What do you mean? This whole country
18 could be in anarchy and you can't judge? And how would
19 that -- how would that work?
20 PROSPECTIVE JUROR CROSS: You're not supposed to
21 judge no one, Your Honor. And that I just don't --
22 THE COURT: You know, I don't want to bother this
23 man too much.
24 PROSPECTIVE JUROR CROSS: -- I may make a mistake.
25 THE COURT: Why don't you take over the questioning,

1 Mr. Schwartz, Mr. Schwartz, Mr. Roger.
2 PROSPECTIVE JUROR CROSS: I might make a mistake
3 by --
4 MR. ROGER: Sir, under any circumstances, if you
5 were in a position, could you vote for the death penalty?
6 PROSPECTIVE JUROR CROSS: No.
7 MR. ROGER: We'd challenge for cause, Your Honor.
8 MR. LaPORTA: No objection.
9 THE COURT: Go back to room 1013. The clerk call
10 another prospective juror.
11 THE CLERK: Patsy Grannan.
12 MR. LaPORTA: Badge number?
13 PROSPECTIVE JUROR GRANNAN: 318.
14 THE COURT: Well, it's on the thing there, it's
15 right on this list. You could just look on the list, it's on
16 -- but maybe if from now on you should call the badge number
17 and the name to accommodate Mr. LaPorta. All right, Ms.
18 Clerk?
19 THE CLERK: I will.
20 THE COURT: How long have you been in Las Vegas?
21 PROSPECTIVE JUROR GRANNAN: Three and a half years.
22 THE COURT: And where did you come from?
23 PROSPECTIVE JUROR GRANNAN: I came from Lawton,
24 Oklahoma.
25 THE COURT: All right. And how long did you live

1 there?
2 PROSPECTIVE JUROR GRANNAN: In Lawton, Oklahoma?
3 THE COURT: Yeah.
4 PROSPECTIVE JUROR GRANNAN: About twenty-five years,
5 sir.
6 THE COURT: All right. What did you do there right
7 before you left, did you work?
8 PROSPECTIVE JUROR GRANNAN: Well, part-time; I was a
9 real estate broker.
10 THE COURT: All right. And then you decided to move
11 here, how long ago?
12 PROSPECTIVE JUROR GRANNAN: Three and a half years.
13 THE COURT: What do you do here now?
14 PROSPECTIVE JUROR GRANNAN: I'm not doing anything
15 now.
16 THE COURT: Okay. You just now looking for work --
17 PROSPECTIVE JUROR GRANNAN: No.
18 THE COURT: -- or are you retired or?
19 PROSPECTIVE JUROR GRANNAN: Semi.
20 THE COURT: Semi.
21 PROSPECTIVE JUROR GRANNAN: I may go look for work
22 later.
23 THE COURT: Good. Are you married?
24 PROSPECTIVE JUROR GRANNAN: Yes, sir.
25 THE COURT: Does your husband work?

1 PROSPECTIVE JUROR GRANNAN: Yes, he does.
2 THE COURT: What does he do?
3 PROSPECTIVE JUROR GRANNAN: He works for the post
4 office.
5 THE COURT: Any children?
6 PROSPECTIVE JUROR GRANNAN: Yes, I have three sons.
7 THE COURT: What do they do for a living?
8 PROSPECTIVE JUROR GRANNAN: My oldest son is
9 currently unemployed. My middle son works for Delta Airlines.
10 My third son is in school and works part-time.
11 THE COURT: Okay. Have you ever been in the
12 military?
13 PROSPECTIVE JUROR GRANNAN: No, sir.
14 THE COURT: Are you acquainted with anybody in law
15 enforcement?
16 PROSPECTIVE JUROR GRANNAN: My neighbor.
17 THE COURT: What's his name.
18 PROSPECTIVE JUROR GRANNAN: He's a Metro -- let me
19 think of his last name -- Juarez [phonetic].
20 THE COURT: Oh. Well, the fact that your neighbor
21 is an officer, that's not going to affect your deliberation in
22 this case?
23 PROSPECTIVE JUROR GRANNAN: No.
24 THE COURT: Again, you're not to give greater weight
25 or lesser weight to a police officer's testimony simply

1 because they're a police officer. You understand that?
2 PROSPECTIVE JUROR GRANNAN: I know and I understand.
3 THE COURT: All right. Have you ever been a victim
4 of a crime?
5 PROSPECTIVE JUROR GRANNAN: Yes, I have.
6 THE COURT: In Lawton, Oklahoma?
7 PROSPECTIVE JUROR GRANNAN: In Lawton, Oklahoma.
8 Not here, in Lawton, Oklahoma.
9 THE COURT: In Lawton. All right. Well, what type
10 of crime?
11 PROSPECTIVE JUROR GRANNAN: Well, not me personally
12 but the family has. My son was robbed at gun point. I have
13 -- they had a few items stolen when they were young.
14 THE COURT: Okay. Did you have to appear in court
15 on that?
16 PROSPECTIVE JUROR GRANNAN: No, no one was ever
17 charged.
18 THE COURT: You never appeared. All right. The
19 fact that your son had that unpleasant experience, that's not
20 going to affect your deliberation in this case?
21 PROSPECTIVE JUROR GRANNAN: No, sir.
22 THE COURT: All right. Have you ever been closely
23 associated with or ever been arrested for a crime?
24 PROSPECTIVE JUROR GRANNAN: My son.
25 THE COURT: What was he arrested for?

1 PROSPECTIVE JUROR GRANNAN: DUI.
2 THE COURT: All right. That was resolved in court?
3 PROSPECTIVE JUROR GRANNAN: I think it was resolved
4 out of court --
5 THE COURT: Okay.
6 PROSPECTIVE JUROR GRANNAN: -- and he went to the --
7 THE COURT: All right.
8 PROSPECTIVE JUROR GRANNAN: -- it was a one time
9 thing, so he went to the class.
10 THE COURT: All right. And again, that's going to
11 affect your deliberation?
12 PROSPECTIVE JUROR GRANNAN: No.
13 THE COURT: Did you ever serve on a jury before?
14 PROSPECTIVE JUROR GRANNAN: Yes, I have.
15 THE COURT: How many times?
16 PROSPECTIVE JUROR GRANNAN: One time.
17 THE COURT: In Lawton?
18 PROSPECTIVE JUROR GRANNAN: Yes.
19 THE COURT: And what was it, criminal or civil?
20 PROSPECTIVE JUROR GRANNAN: It was a criminal.
21 THE COURT: What was the charge?
22 PROSPECTIVE JUROR GRANNAN: Grand theft.
23 THE COURT: All right. Were you picked as a juror?
24 PROSPECTIVE JUROR GRANNAN: Yes, I was.
25 THE COURT: Were you picked as foreperson?

1 PROSPECTIVE JUROR GRANNAN: No.
2 THE COURT: Without telling me what the verdict was,
3 did the jury reach a verdict?
4 PROSPECTIVE JUROR GRANNAN: Yes, we did.
5 THE COURT: All right. You know, in this case if
6 you're picked as juror, it'll -- it possibly could be two
7 phases. The first phase would be the trial phase. You'll
8 hear testimony and you'll hear instructions of law, you'll
9 hear closing arguments. And you, if you're picked as one of
10 the jurors, along with the other jurors, are to determine the
11 guilt or innocence of the defendant. Do you understand that?
12 PROSPECTIVE JUROR GRANNAN: Yes.
13 THE COURT: If you find that he's not guilty or he's
14 guilty of a lesser crime, that's -- completes the case.
15 However, if the jury finds he's guilty of first degree murder
16 and first degree murder only, then it -- the second phase
17 kicks in. Do you understand that?
18 PROSPECTIVE JUROR GRANNAN: Yes, sir.
19 THE COURT: And at the penalty phase, we call it,
20 you'll hear other evidence and testimony and you'll give --
21 I'll give you further instructions. You'll hear other closing
22 arguments. Then you'll go back and deliberate the penalty and
23 your options will be life with the possibility of parole, life
24 without the possibility of parole, or imposition of the death
25 penalty. Do you understand that?

1 PROSPECTIVE JUROR GRANNAN: Yes, sir.
2 THE COURT: Now, could you equally consider each
3 option?
4 PROSPECTIVE JUROR GRANNAN: I think so.
5 THE COURT: All right. Any reason you couldn't be a
6 fair and impartial juror then?
7 PROSPECTIVE JUROR GRANNAN: No.
8 THE COURT: Thank you very much. Questions?
9 PROSPECTIVE JUROR GRANNAN: But, sir, could --
10 THE COURT: I know there's a but. I'm trying to get
11 out of it. All right, what's the problem? What's the but?
12 PROSPECTIVE JUROR GRANNAN: I have a sister who's
13 very ill right now and she could pass away within the next two
14 weeks, and I did write that on my questionnaire that I would
15 like to be free for her funeral if she should.
16 THE COURT: Okay. I certainly hope that never
17 happens --
18 PROSPECTIVE JUROR GRANNAN: I do, too, and --
19 THE COURT: -- but we'll certainly consider it.
20 PROSPECTIVE JUROR GRANNAN: -- but I don't know how
21 it would --
22 THE COURT: Thank you.
23 PROSPECTIVE JUROR GRANNAN: -- weigh on my --
24 THE COURT: All right. Questions, pass for cause?
25 MR. ROGER: Pass for cause, Judge.

1 THE COURT: Questions? Pass for cause?
2 MS. McMAHON: Yes, Your Honor, thank you.
3 Good afternoon, Mrs. Grannan.
4 PROSPECTIVE JUROR GRANNAN: Hi.
5 MS. McMAHON: I reviewed your questionnaire and I do
6 have a few questions for you.
7 PROSPECTIVE JUROR GRANNAN: Okay.
8 MS. McMAHON: The Judge just asked you if, in fact,
9 this case should reach the penalty phase, could you equally
10 consider all options.
11 PROSPECTIVE JUROR GRANNAN: Mm-hmm.
12 MS. McMAHON: And your response -- your response was
13 that I think so.
14 PROSPECTIVE JUROR GRANNAN: Mm-hmm.
15 MS. McMAHON: On the questionnaire that you
16 completed and question number 68, you wrote, all murder
17 convictions should receive death or life without parole.
18 PROSPECTIVE JUROR GRANNAN: Mm-hmm.
19 MS. McMAHON: That obviously was your feeling when
20 you were filling out the questionnaire. That's changed as a
21 result of being here this morning?
22 PROSPECTIVE JUROR GRANNAN: No. I think I would
23 look at all the evidence and what happened in this murder
24 case. And if this person was convicted and he did it in cold
25 blood, then I would have no problems with the life without

1 parole or the death penalty.

2 MS. McMAHON: Would you equally consider life --

3 PROSPECTIVE JUROR GRANNAN: Yes, I would.

4 MS. McMAHON: -- with parole?

5 PROSPECTIVE JUROR GRANNAN: Yes.

6 MS. McMAHON: Question 75 asks of your view and it
7 said, the question -- I'll phrase it for you since you don't
8 have a copy in front of you -- while asking questions
9 concerning your views about the death penalty and the penalty
10 of life in prison with or without the possibility of parole
11 suggests to you that the defendant must be guilty. Now, you
12 answered that no, but then you wrote, law says , quotation
13 marks, "innocent until proven guilty." Do you believe that?

14 PROSPECTIVE JUROR GRANNAN: Yes, I do.

15 MS. McMAHON: In question number 97, the question
16 asks, without having heard any evidence in this case, what are
17 your general thoughts about the benefit of imposing a sentence
18 of life with the possibility of parole on a person convicted
19 of murder in the first degree? And again, you wrote, no
20 sentence of possible parole for a person who killed two other
21 persons.

22 PROSPECTIVE JUROR GRANNAN: I'm sorry, would you say
23 that again, please?

24 MS. McMAHON: Your response was, no sentence of
25 possible parole for a person who killed two other persons.

1 But, in fact, you could now, sitting here, consider equally?
2 PROSPECTIVE JUROR GRANNAN: I think so, especially
3 with the background.
4 MS. McMAHON: On the explanation sheet --
5 PROSPECTIVE JUROR GRANNAN: Mm-hmm.
6 MS. McMAHON: You had a note that the son of a
7 friend of yours was shot and murdered.
8 PROSPECTIVE JUROR GRANNAN: Mm-hmm.
9 MS. McMAHON: And that it could affect your
10 judgement. Certainly that was a tragic thing. How do you
11 feel it could affect your judgement in this case?
12 PROSPECTIVE JUROR GRANNAN: Well, I really, you
13 know, don't know if it would affect my judgement in this case.
14 But, it was a tragic thing and it still remains with me.
15 And also, my husband works for the post office and a
16 man was killed there, so those things have been on my mind for
17 some period of time.
18 MS. McMAHON: And do you think that the pain and the
19 loss and the feelings that you had in those situations are
20 going to carry over this trial and affect your judgement?
21 PROSPECTIVE JUROR GRANNAN: I don't think so, no.
22 MS. McMAHON: Thank you for answering my questions.
23 THE COURT: Pass for cause?
24 MS. McMAHON: Pass for cause.
25 THE COURT: All right.

1 Mr. Delacy, is it?
2 PROSPECTIVE JUROR DELACY: Yes, sir.
3 THE COURT: How long have you been in Las Vegas?
4 PROSPECTIVE JUROR DELACY: Eighteen years.
5 THE COURT: And what do you do for a living?
6 PROSPECTIVE JUROR DELACY: Insurance adjuster.
7 THE COURT: Are you married?
8 PROSPECTIVE JUROR DELACY: Yes.
9 THE COURT: What does your wife do, if she works?
10 PROSPECTIVE JUROR DELACY: She's -- works for UMC.
11 THE COURT: As a nurse?
12 PROSPECTIVE JUROR DELACY: No, she works in the
13 billing department.
14 THE COURT: Do you have any children?
15 PROSPECTIVE JUROR DELACY: Four.
16 THE COURT: Any that work?
17 PROSPECTIVE JUROR DELACY: Yes. My oldest son's a
18 United States Air Force recruiting officer. My second son's a
19 respiratory therapist. My third son's in banking, and my
20 daughter's a secretary.
21 THE COURT: All right. A secretary for who, what
22 company?
23 PROSPECTIVE JUROR DELACY: Air Systems.
24 THE COURT: Okay. Have you ever been in the
25 military?

1 PROSPECTIVE JUROR DELACY: No.
2 THE COURT: Are you acquainted with anybody in law
3 enforcement?
4 PROSPECTIVE JUROR DELACY: No.
5 THE COURT: Have you ever been a victim of a crime?
6 PROSPECTIVE JUROR DELACY: Yes.
7 THE COURT: What was that?
8 PROSPECTIVE JUROR DELACY: Home burglary and an auto
9 burglary.
10 THE COURT: All right. Did they ever catch the
11 individuals?
12 PROSPECTIVE JUROR DELACY: No.
13 THE COURT: The fact that you had those two
14 unpleasant experiences, that's not going to affect your
15 deliberation in this case, is it?
16 PROSPECTIVE JUROR DELACY: No.
17 THE COURT: Have you or anyone closely associated
18 with you ever been arrested for a crime?
19 PROSPECTIVE JUROR DELACY: No.
20 THE COURT: You ever serve on a jury before?
21 PROSPECTIVE JUROR DELACY: Yes.
22 THE COURT: How many times?
23 PROSPECTIVE JUROR DELACY: Once.
24 THE COURT: Criminal or civil case?
25 PROSPECTIVE JUROR DELACY: Criminal.

1 THE COURT: What was the charge?
2 PROSPECTIVE JUROR DELACY: Domestic battery.
3 THE COURT: All right. That was here in Las Vegas?
4 PROSPECTIVE JUROR DELACY: Yes.
5 THE COURT: And you were picked as a juror?
6 PROSPECTIVE JUROR DELACY: Yes.
7 THE COURT: Were you picked as foreperson?
8 PROSPECTIVE JUROR DELACY: No.
9 THE COURT: You deliberated the case?
10 PROSPECTIVE JUROR DELACY: Yes.
11 THE COURT: Without telling me what the verdict was,
12 did the jury reach a verdict?
13 PROSPECTIVE JUROR DELACY: Yes.
14 THE COURT: Okay. That second aspect of this case,
15 the first phase would be the trial phase. If and only if Mr.
16 Thomas is found guilty of first degree murder, then the
17 penalty phase kicks in. The jury is the one that imposes a
18 penalty. Do you understand that?
19 PROSPECTIVE JUROR DELACY: Yes.
20 THE COURT: And there's three options in the State
21 of Nevada -- under our laws, the State of Nevada, there's
22 three options: Life with the possibility of parole, life
23 without the possibility of parole, and the imposition of the
24 death penalty. Do you understand that?
25 PROSPECTIVE JUROR DELACY: Yes.

1 THE COURT: And again, you'll have further
2 testimony, evidence, instructions as exactly what the law is
3 on the penalty phase, closing arguments, and you'll go back
4 and deliberate. We just want to be assured that you could
5 equally consider each option, is that -- could you equally
6 consider each option?
7 PROSPECTIVE JUROR DELACY: No.
8 THE COURT: Okay. Well, why not?
9 PROSPECTIVE JUROR DELACY: Because I don't believe
10 in the last two options you offered.
11 THE COURT: I forgot what it was. What don't --
12 what don't you believe in?
13 PROSPECTIVE JUROR DELACY: I believe if he's
14 convicted he should die.
15 THE COURT: No matter what the background is? No
16 matter -- any of the circumstances?
17 PROSPECTIVE JUROR DELACY: No.
18 THE COURT: Is that a religious belief you hold
19 or --
20 PROSPECTIVE JUROR DELACY: No.
21 THE COURT: -- where do you get this belief from? I
22 mean, this is not the law of the United States, this is not
23 the law of the states of Nevada or any other states. Where do
24 you get this notion?
25 PROSPECTIVE JUROR DELACY: Where do I get this

1 notion?

2 THE COURT: Mm-hmm.

3 PROSPECTIVE JUROR DELACY: He's not going to provide
4 any economic or social benefit to society any further.

5 THE COURT: The State wants anything or voir dire
6 him or what?

7 MR. SCHWARTZ: Mr. Delacy, you understand that in
8 the State of Nevada we have certain categories of murder,
9 first degree and second degree. And it would only be if a
10 jury found the defendant guilty of first degree murder that
11 the jury would have to determine the punishment?

12 PROSPECTIVE JUROR DELACY: Yes, sir.

13 MR. SCHWARTZ: Okay. And the legislature has
14 provided punishments of the three possible categories: Life
15 imprisonment with parole, life imprisonment without parole,
16 and the death penalty. And the reason for that is every
17 murder --and that would be possible punishment for first
18 degree murder -- every first degree murder is different, okay?
19 People kill people for different reasons, unfortunately.

20 Now, can you envision a circumstance where somebody
21 could have been convicted of first degree murder but yet
22 warrant consideration for life imprisonment as opposed to
23 death?

24 PROSPECTIVE JUROR DELACY: No.

25 MR. SCHWARTZ: I have no further questions, Judge.

1 MR. LaPORTA: Challenge for cause, Your Honor.
2 THE COURT: All right. Report back to room 1013.
3 The clerk, call another prospective juror.
4 THE CLERK: Craig Watral.
5 THE COURT: Craig Watral.
6 THE CLERK: Badge 320.
7 THE COURT: Take that same seat.
8 PROSPECTIVE JUROR WATRAL: Yes, sir.
9 THE COURT: How long have you been in Las Vegas?
10 PROSPECTIVE JUROR WATRAL: Nineteen years, sir.
11 THE COURT: And what do you do for a living?
12 PROSPECTIVE JUROR WATRAL: I work for Mirage Resorts
13 as a casino pit manager.
14 THE COURT: All right. Are you married?
15 PROSPECTIVE JUROR WATRAL: Yes, sir, I am.
16 THE COURT: Does your wife work?
17 PROSPECTIVE JUROR WATRAL: No, she does not. Now,
18 she's back in school.
19 THE COURT: All right. Do you have any children?
20 PROSPECTIVE JUROR WATRAL: We have two sons; one is
21 23, he's a valet parker, and another is in high school, 16.
22 THE COURT: Oh. Have you ever been in the military?
23 PROSPECTIVE JUROR WATRAL: No, sir.
24 THE COURT: Are you acquainted with anybody in law
25 enforcement?

1 PROSPECTIVE JUROR WATRAL: My wife has a cousin
2 who's a homicide detective in Seattle.
3 THE COURT: All right.
4 PROSPECTIVE JUROR WATRAL: I think I've met him
5 once.
6 THE COURT: The fact -- if that's the case, you
7 know, it's not going to affect your deliberation in this case,
8 is it?
9 PROSPECTIVE JUROR WATRAL: No, sir.
10 THE COURT: You're not going to give greater weight
11 or lesser weight to a police officer's testimony simply
12 because they're a police officer, are you?
13 PROSPECTIVE JUROR WATRAL: No, sir.
14 THE COURT: Have you been in the military?
15 PROSPECTIVE JUROR WATRAL: No, sir.
16 THE COURT: Have you ever served on a jury before?
17 PROSPECTIVE JUROR WATRAL: Yes, I've served on two;
18 two different juries.
19 THE COURT: All right.
20 PROSPECTIVE JUROR WATRAL: We did reach a verdict in
21 both cases.
22 THE COURT: All right. The first one, was it
23 criminal or civil case?
24 PROSPECTIVE JUROR WATRAL: It was criminal.
25 THE COURT: All right. What was the charge?

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1 PROSPECTIVE JUROR WATRAL: It was assault.
2 THE COURT: All right. And you picked as a juror?
3 PROSPECTIVE JUROR WATRAL: Correct.
4 THE COURT: You weren't foreman, is that correct?
5 PROSPECTIVE JUROR WATRAL: No, I was not.
6 THE COURT: But the jury reached a verdict?
7 PROSPECTIVE JUROR WATRAL: Yes.
8 THE COURT: The second one was a criminal?
9 PROSPECTIVE JUROR WATRAL: It was criminal also. I
10 think it was a stolen auto.
11 THE COURT: You were picked as a juror?
12 PROSPECTIVE JUROR WATRAL: Picked as a juror, not as
13 a foreman; we did reach a verdict.
14 THE COURT: And you reached a verdict. All right.
15 Were you ever the victim of a crime?
16 PROSPECTIVE JUROR WATRAL: I -- no, sir.
17 THE COURT: All right. Were you ever closely
18 associated or were you ever arrested for crime?
19 PROSPECTIVE JUROR WATRAL: Yes, sir. I was arrested
20 once.
21 THE COURT: What was that for?
22 PROSPECTIVE JUROR WATRAL: It was actually failure
23 to appear.
24 THE COURT: Oh, on a traffic ticket or something?
25 PROSPECTIVE JUROR WATRAL: Yes, it's --

1 THE COURT: All right. That's not going to affect
2 your deliberation.
3 PROSPECTIVE JUROR WATRAL: No, sir.
4 THE COURT: I'm sure that was resolved and --
5 PROSPECTIVE JUROR WATRAL: Twenty years ago, yes,
6 sir.
7 THE COURT: All right. Twenty years ago. That
8 other aspect of the possible two phases -- phase one would be
9 the trial phase and if the jury found the defendant guilty of
10 first degree murder, then it would have the second phase, the
11 penalty phase and they would impose punishment and the -- as
12 our laws of the State of Nevada suggest that there's three
13 options: Life with the possibility of parole, life without
14 the possibility of parole, and the imposition of the death
15 penalty. And it's totally up to the jury to come back with
16 one of those options. Do you understand that?
17 PROSPECTIVE JUROR WATRAL: Yes, sir.
18 THE COURT: Could you equally consider all of those
19 options?
20 PROSPECTIVE JUROR WATRAL: I could.
21 THE COURT: Thank you, very much. Is there any
22 reason you couldn't be a fair and impartial juror?
23 PROSPECTIVE JUROR WATRAL: I don't believe there is,
24 no.
25 THE COURT: All right.

1 MR. ROGER: Pass for cause.
2 THE COURT: Questions by the defense?
3 MS. McMAHON: We would pass for cause also, Your
4 Honor.
5 THE COURT: All right. Thank you.
6 Cindy Miller.
7 PROSPECTIVE JUROR MILLER: Mm-hmm, yes.
8 THE COURT: How long have you been in Las Vegas?
9 PROSPECTIVE JUROR MILLER: Seven years.
10 THE COURT: All right. What do you do for a living?
11 PROSPECTIVE JUROR MILLER: I work over at the MGM
12 Grand Hotel in hotel operations.
13 THE COURT: Are you married?
14 PROSPECTIVE JUROR MILLER: No, just fiance.
15 THE COURT: Okay. Children?
16 PROSPECTIVE JUROR MILLER: Nope.
17 THE COURT: Have you ever been in the military?
18 PROSPECTIVE JUROR MILLER: No.
19 THE COURT: Are you acquainted with anybody in law
20 enforcement?
21 PROSPECTIVE JUROR MILLER: Lance Malone, I work with
22 his wife.
23 THE COURT: All right. The fact that you work with
24 Lance Malone, I think he's an officer and then he was elected
25 commissioner, that's not going to affect the deliberation in

1 this case, is it?
2 PROSPECTIVE JUROR MILLER: No, I've only met him
3 once.
4 THE COURT: You're not -- yeah. You're not going to
5 give greater weight or lesser weight to a police officer's
6 testimony simply because they're a police officer, are you?
7 PROSPECTIVE JUROR MILLER: No.
8 THE COURT: Have you ever been a victim of a crime?
9 PROSPECTIVE JUROR MILLER: A car -- stolen car.
10 THE COURT: All right. Did they ever catch the
11 individuals?
12 PROSPECTIVE JUROR MILLER: No.
13 THE COURT: You never had to appear in court?
14 PROSPECTIVE JUROR MILLER: No.
15 THE COURT: And that's not going to affect your
16 deliberation?
17 PROSPECTIVE JUROR MILLER: No.
18 THE COURT: Have you or anyone closely associated
19 with you ever been arrested for a crime?
20 PROSPECTIVE JUROR MILLER: No.
21 THE COURT: Have you served on a jury before?
22 PROSPECTIVE JUROR MILLER: No.
23 THE COURT: Will you be able to follow my
24 instructions?
25 PROSPECTIVE JUROR MILLER: Yes.

1 THE COURT: And again, that second possible
2 situation that may arise in this case, if and only if you find
3 the -- if the jury finds the defendant guilty of first degree
4 murder, then we have a penalty phase. If you don't find him
5 guilty of first degree murder or lesser or not guilty, then we
6 don't have it. You understand that, right?
7 PROSPECTIVE JUROR MILLER: Yes.
8 THE COURT: So we're only talking about the
9 possibility that if you do find him guilty of first degree
10 murder, we go into the penalty phase, all right? At the
11 penalty phase, as our law requires, the jury sets punishment.
12 It could either be life with the possibility of parole, life
13 without the possibility of parole, or the imposition of the
14 death penalty. Do you understand that?
15 PROSPECTIVE JUROR MILLER: Yes.
16 THE COURT: And could treat each option equally and
17 decide with the other fellow jurors what the proper punishment
18 could be?
19 PROSPECTIVE JUROR MILLER: Yes.
20 THE COURT: Any reason you couldn't be a fair and
21 impartial juror on this case?
22 PROSPECTIVE JUROR MILLER: No.
23 THE COURT: Thank you very much. Questions, pass
24 for cause?
25 MR. ROGER: Yes. Good afternoon, Ms. Miller. In

1 your questionnaire you indicated that you had really never
2 given a lot of thought about the death penalty prior to
3 filling this out, so I would like to ask you couple of
4 questions. What was your first impression when you learned
5 that this was a capital murder case?

6 PROSPECTIVE JUROR MILLER: Just through education, I
7 knew that if it -- if it's murder case that that is a
8 possibility of an outcome.

9 MR. ROGER: Okay. Do you feel that you're well
10 suited to make that type of decision?

11 PROSPECTIVE JUROR MILLER: If provided the correct
12 evidence I feel I could make a decision.

13 MR. ROGER: Okay. But you would agree that it's a
14 pretty onerous task that we're placing upon the jury, would
15 you agree with that?

16 PROSPECTIVE JUROR MILLER: Well, yes. I mean it's
17 an important decision.

18 MR. ROGER: Do you feel that under the appropriate
19 circumstances, you personally could vote for the death
20 penalty?

21 PROSPECTIVE JUROR MILLER: Yes.

22 MR. ROGER: You wrote in your questionnaire that in
23 response to one of the questions that it would be important to
24 hear from doctors. Do you remember that?

25 PROSPECTIVE JUROR MILLER: Well, they were

1 mentioning about background and situations like that, and I
2 wasn't sure of what direction they were going they were going
3 those questions. In which case, if they were going in the
4 direction that -- and sometimes they bring in that it might be
5 something for, you know, like mind-wise that the whole
6 situation occurred. Well, that background situation in which
7 case, if that was the direction they were going, I would
8 expect to hear from legal physicians backing up that evidence.

9 MR. ROGER: Do you believe that either psychologists
10 or psychiatrists have any place in the courtroom concerning
11 whether or not the death penalty is appropriate?

12 PROSPECTIVE JUROR MILLER: I believe they have a
13 place if it's part of the evidence being provided and if
14 they're backing some type of evidence.

15 MR. ROGER: All right. Do you feel that you're a
16 pretty good judge of character?

17 PROSPECTIVE JUROR MILLER: Yeah.

18 MR. ROGER: Are you the type of person who could
19 weigh the testimony of a psychiatrist or psychologist and make
20 you own decision as to whether or not his conclusion or his
21 reasoning is valid?

22 PROSPECTIVE JUROR MILLER: I don't understand that
23 question.

24 MR. ROGER: Would you automatically accept what the
25 psychiatrist or psychologist were to say simply because of his

1 educational background, or would you just take it and consider
2 it and weigh the pros and cons of what he had to say and make
3 your own decision?

4 PROSPECTIVE JUROR MILLER: I wouldn't take his word
5 for it, no. I would -- you know, I mean I would listen to
6 what he had to say as part of the evidence and then look at it
7 all in a whole.

8 MR. ROGER: So you wouldn't automatically accept
9 what he had to say?

10 PROSPECTIVE JUROR MILLER: No.

11 MR. ROGER: Thank you. Pass for cause.

12 THE COURT: All right. Any questions or pass for
13 cause?

14 MS. McMAHON: Just briefly, Your Honor, if I may.

15 Good afternoon, Ms. Miller. I have only question of
16 you. On the questionnaire that you filled out, question 71,
17 said when a defendant is charged with a crime, do you think he
18 should have to prove his innocence, and you marked it no. But
19 there was a lined area underneath and you wrote, we must prove
20 defendant guilty. What did you mean by we?

21 PROSPECTIVE JUROR MILLER: The -- like in this case,
22 the State.

23 MS. McMAHON: Oh.

24 PROSPECTIVE JUROR MILLER: It's their
25 responsibility --

1 MS. McMAHON: Okay.
2 PROSPECTIVE JUROR MILLER: -- to provide enough
3 evidence.
4 MS. McMAHON: You didn't see that as part of the
5 jury function?
6 PROSPECTIVE JUROR MILLER: No, no.
7 MS. McMAHON: Okay. Thank you. I have no more
8 questions.
9 PROSPECTIVE JUROR MILLER: I meant like as the court
10 system's responsibility.
11 MS. McMAHON: Okay. Thank you.
12 THE COURT: Pass for cause?
13 MS. McMAHON: Pass for cause, Your Honor.
14 THE COURT: All right.
15 THE CLERK: Angela McCall.
16 PROSPECTIVE JUROR McCALL: Yes, sir.
17 THE COURT: How long have you been in Las Vegas?
18 PROSPECTIVE JUROR McCALL: Ten years.
19 THE COURT: And what do you do for a living?
20 PROSPECTIVE JUROR McCALL: I work for Las Vegas
21 Plant Design.
22 THE COURT: All right.
23 PROSPECTIVE JUROR McCALL: I do plants for
24 conventions and home maintenance --
25 THE COURT: Okay.

1 PROSPECTIVE JUROR McCALL: -- urban homes.
2 THE COURT: Plants like --
3 PROSPECTIVE JUROR McCALL: Mm-hmm. Live plants,
4 yes.
5 THE COURT: Maybe you'll end up another Martha
6 Stewart.
7 PROSPECTIVE JUROR McCALL: Never know.
8 THE COURT: Possibly, right? Are you married?
9 PROSPECTIVE JUROR McCALL: Yes, sir, I am.
10 THE COURT: What does your husband do?
11 PROSPECTIVE JUROR McCALL: He works at the Legacy
12 Golf Course.
13 THE COURT: Children?
14 PROSPECTIVE JUROR McCALL: Yes, one son. He's a
15 graduate from high school. He works at Boomtown.
16 THE COURT: Okay. Have you ever been in the
17 military?
18 PROSPECTIVE JUROR McCALL: No, sir.
19 THE COURT: Are you acquainted with anybody in law
20 enforcement?
21 PROSPECTIVE JUROR McCALL: Just back in up-state New
22 York --
23 THE COURT: Okay.
24 PROSPECTIVE JUROR McCALL: -- where I was from.
25 THE COURT: With some acquaintances there?

1 PROSPECTIVE JUROR McCALL: Yeah, relatives in the
2 police force, yes.

3 THE COURT: All right. The fact that back in up-
4 state New York, you have some relatives, acquaintances, that's
5 not going to affect your --

6 PROSPECTIVE JUROR McCALL: No, not at all.

7 THE COURT: -- deliberation in this case? You're
8 not going to give greater weight or lesser weight to a police
9 officer's testimony simply because they're a police officer,
10 are you?

11 PROSPECTIVE JUROR McCALL: No, not at all.

12 THE COURT: You ever been a victim of a crime?

13 PROSPECTIVE JUROR McCALL: Yes.

14 THE COURT: What was that?

15 PROSPECTIVE JUROR McCALL: Stolen car.

16 THE COURT: All right. They ever catch the
17 individual?

18 PROSPECTIVE JUROR McCALL: No.

19 THE COURT: That's not going to affect your
20 deliberation?

21 PROSPECTIVE JUROR McCALL: Not at all.

22 THE COURT: Have you ever been closely associated
23 with or ever been arrested for a crime?

24 PROSPECTIVE JUROR McCALL: I believe my brother was
25 picked up for DUI about --

1 THE COURT: All right.
2 PROSPECTIVE JUROR McCALL: -- seven years ago in New
3 York.
4 THE COURT: But that's not going to affect your
5 deliberation?
6 PROSPECTIVE JUROR McCALL: No, not at all.
7 THE COURT: Did you ever serve on a jury before?
8 PROSPECTIVE JUROR McCALL: No.
9 THE COURT: Will you be able to follow my
10 instructions?
11 PROSPECTIVE JUROR McCALL: Yes, sir.
12 THE COURT: You understand that Mr. Marlo Thomas
13 here is the defendant in this case and he's here by whatever
14 charging document. It's an information, it's a piece of paper
15 that the clerk will read to the jury when we impanel the jury
16 and it's a mere charging documents. It's not evidence, do you
17 understand that?
18 PROSPECTIVE JUROR McCALL: Yes sir, I do.
19 THE COURT: Do you understand that Mr. Thomas is
20 presumed to be innocent until proven guilty?
21 PROSPECTIVE JUROR McCALL: Yes.
22 THE COURT: You understand the State of Nevada has
23 the burden of proving the defendant guilty beyond a reasonable
24 doubt?
25 PROSPECTIVE JUROR McCALL: That's correct, yes.

1 THE COURT: Do you follow all those principles of
2 law --
3 PROSPECTIVE JUROR McCALL: Yes, I do.
4 THE COURT: -- and you agree with them, is that
5 correct?
6 PROSPECTIVE JUROR McCALL: Mm-hmm.
7 THE COURT: And if you -- if the jury feels that the
8 State has met their burden and they feel like the first degree
9 murder has been proved, then a second phase kicks in as the
10 penalty phase. And the jury decides punishment in a murder
11 case, you understand that?
12 PROSPECTIVE JUROR McCALL: Yes, I do.
13 THE COURT: And you have the option of picking --
14 after hearing testimony, evidence, further instructions,
15 arguments, back and deliberate, forms of verdicts, you'll have
16 everything and you'll have the option, along with the other
17 jurors, of deciding whether life with the possibility of
18 parole, life without the possibility of parole or the
19 imposition of the death penalty will be imposed. Do you
20 understand that?
21 PROSPECTIVE JUROR McCALL: Yes, I do.
22 THE COURT: Could you equally consider those
23 options?
24 PROSPECTIVE JUROR McCALL: Not all three, no.
25 THE COURT: What can't you consider?

1 PROSPECTIVE JUROR McCALL: Life with possibility of
2 parole. On a murder one, I just can't see it on a double
3 homicide.
4 THE COURT: Mm-hmm.
5 PROSPECTIVE JUROR McCALL: I just can't parole
6 anyone. I know I couldn't.
7 THE COURT: All right. Does the State want to go
8 into that?
9 MR. SCHWARTZ: No, Your Honor.
10 THE COURT: Does the defense want to?
11 MR. LaPORTA: We would challenge for cause, Your
12 Honor.
13 THE COURT: All right. Report back to room 1013.
14 The clerk call another prospective juror.
15 THE CLERK: John Cortez, badge number 322.
16 THE COURT: I think I'm going to switch ways of
17 doing this. You're Mr. John Cortez?
18 PROSPECTIVE JUROR CORTEZ: Yes, sir.
19 THE COURT: You know, if you're picked as a juror,
20 Mr. Cortez, and you find the defendant guilty of first degree
21 murder, then the second phase kicks in. Do you understand
22 that?
23 PROSPECTIVE JUROR CORTEZ: Yes.
24 THE COURT: And then you'll have the option of
25 finding the defendant guilty of first degree murder -- or,

1 excuse me, you'll already have him found guilty of first
2 degree murder, but to impose a penalty of life with the
3 possibility of parole, life without the possibility of parole,
4 or death penalty. Do you understand that?
5 PROSPECTIVE JUROR CORTEZ: Yes, sir.
6 THE COURT: Could you equally consider all those
7 options?
8 PROSPECTIVE JUROR CORTEZ: Yes, sir.
9 THE COURT: All right. And how long have you been
10 in Las Vegas?
11 PROSPECTIVE JUROR CORTEZ: Forty-one years.
12 THE COURT: And what do you do for a living?
13 PROSPECTIVE JUROR CORTEZ: I work for the Department
14 of Transportation.
15 THE COURT: Okay. Doing what?
16 PROSPECTIVE JUROR CORTEZ: I'm a supervisor for the
17 line striping company.
18 THE COURT: Are you married?
19 PROSPECTIVE JUROR CORTEZ: Yes, sir.
20 THE COURT: Does your wife work?
21 PROSPECTIVE JUROR CORTEZ: She just started with
22 Sprint.
23 THE COURT: Sprint. Do you have any children?
24 PROSPECTIVE JUROR CORTEZ: Three.
25 THE COURT: Any that work?

1 PROSPECTIVE JUROR CORTEZ: No.
2 THE COURT: All right. You ever been in the
3 military?
4 PROSPECTIVE JUROR CORTEZ: No, sir.
5 THE COURT: Are you acquainted with anybody in law
6 enforcement?
7 PROSPECTIVE JUROR CORTEZ: Yes, sir.
8 THE COURT: Who is that?
9 PROSPECTIVE JUROR CORTEZ: I have a cousin that's --
10 worked for Metro, a brother-in-law who works for Metro, and a
11 cousin that works for the Highway Patrol.
12 THE COURT: Okay. Here in Las Vegas?
13 PROSPECTIVE JUROR CORTEZ: Yes.
14 THE COURT: Okay. And what are their names?
15 PROSPECTIVE JUROR CORTEZ: My brother-in-law is
16 Steve Gamble [phonetic] -- excuse me. And my cousin is Mark
17 Montoya [phonetic].
18 THE COURT: All right. The fact that you have some
19 relatives working in law enforcement, is that -- that's not
20 going to affect your deliberation in this case, is it?
21 PROSPECTIVE JUROR CORTEZ: No, sir.
22 THE COURT: You understand you're not to give
23 greater weight or lesser weight to a police officer's
24 testimony simply because they're a police officer. Do you
25 understand that?

1 PROSPECTIVE JUROR CORTEZ: Yes.
2 THE COURT: Have you been the victim of a crime?
3 PROSPECTIVE JUROR CORTEZ: No, sir.
4 THE COURT: Have you or anyone closely associated
5 with you ever been arrested for a crime?
6 PROSPECTIVE JUROR CORTEZ: No, sir.
7 THE COURT: Did you ever serve on a jury before?
8 PROSPECTIVE JUROR CORTEZ: No, sir.
9 THE COURT: Any reason you couldn't be a fair and
10 impartial juror then?
11 PROSPECTIVE JUROR CORTEZ: No, sir.
12 THE COURT: Thank you very much. Questions, pass
13 for cause?
14 MR. ROGER: Pass for cause, Judge.
15 THE COURT: Questions, pass for cause?
16 MS. McMAHON: I have a few questions, please, Your
17 Honor. Thank you.
18 Good afternoon, Mr. Cortez.
19 PROSPECTIVE JUROR CORTEZ: Good afternoon.
20 MS. McMAHON: The Judge just asked you about the
21 family member that you have in law enforcement, your brother-
22 in-law and two cousins. In your questionnaire you had listed
23 your relationship to them, and in response to the question as
24 to whether those relationships might possibly influence you,
25 you responded that you might be influenced to view the case

1 from their perspective. Is this based on conversations or
2 experiences you've had with them in the past or --
3 PROSPECTIVE JUROR CORTEZ: Well, that's just based
4 on if I -- if I were to speak to them regarding this case or
5 any case. It might.
6 MS. McMAHON: It might be?
7 PROSPECTIVE JUROR CORTEZ: Might be.
8 MS. McMAHON: Thank you. I don't want to beat a
9 dead horse, okay. Let's talk a little bit about might. My
10 client, Marlo Thomas, is sitting here facing charges of murder
11 and if convicted possible severe penalties. If you were in
12 his place, how would you feel about a juror who might be
13 influenced? Would you want to be there?
14 PROSPECTIVE JUROR CORTEZ: Probably not.
15 MS. McMAHON: Probably not. Have you been a juror
16 before?
17 PROSPECTIVE JUROR CORTEZ: No.
18 MS. McMAHON: Okay. And have you had any experience
19 in the legal system?
20 PROSPECTIVE JUROR CORTEZ: No.
21 MS. McMAHON: Okay. The reason I'm asking was that
22 in the section of the questionnaire that asked you about your
23 opinion of attorneys, it seemed to be your opinion that
24 there's not enough integrity. Is that equal for defense
25 attorneys and prosecutors or --

1 PROSPECTIVE JUROR CORTEZ: I think, like the other
2 juror, it's based on a lot of Hollywood influence.

3 MS. McMAHON: Okay. On the questionnaire, there's
4 the biblical quotation of an eye for an eye, and your response
5 was you hold with what the Bible says in all matters. In that
6 regard, if you found -- you were on the jury and the jury
7 found my client guilty, does that mean that you would
8 automatically vote for the death penalty without considering
9 the other two alternatives?

10 PROSPECTIVE JUROR CORTEZ: No, I don't think believe
11 it means that.

12 MS. McMAHON: What does it mean then?

13 PROSPECTIVE JUROR CORTEZ: I would -- I would
14 consider what the evidence -- the evidence -- based on the
15 evidence presented.

16 MS. McMAHON: On the -- going back again to the
17 questionnaire in another area, the questionnaire tells you
18 that you must consider the defendant's background in
19 determining the appropriate sentence and asked whether you
20 could consider those factors. And you marked possibly to --
21 one is could you consider the terms of the death penalty, and
22 could you consider it in terms of life with the possibility of
23 parole, life without the possibility of parole. After being
24 here in Court this morning and listening to the Judge and
25 hearing the responses and the questions that have been

1 answered, if you were chosen on the jury, would you, in fact,
2 meet that duty, would you consider all of those factors in
3 determining the appropriate sentence?

4 PROSPECTIVE JUROR CORTEZ: Yeah, I believe I would.

5 MS. McMAHON: Okay. Going back to your probably,
6 okay, and this is not to embarrass you, Mr. Cortez, you
7 understand that?

8 PROSPECTIVE JUROR CORTEZ: Sure.

9 MS. McMAHON: Would it be fair, do you believe, to
10 state that given your family relationships with law
11 enforcement and the possibility that you might be influenced
12 by them or their way of thinking, that you would not be a fair
13 and impartial juror?

14 PROSPECTIVE JUROR CORTEZ: Do I think I would not be
15 a fair? No, I don't -- I don't think that. I think that I
16 would be a fair and impartial.

17 MS. McMAHON: You think you would be fair and
18 impartial. Then, in regard to my earlier question, if you
19 were sitting where my client, Marlo Thomas, is sitting right
20 now, would you want someone like you on the jury?

21 PROSPECTIVE JUROR CORTEZ: Yes.

22 MS. McMAHON: Okay. I have no further questions.
23 Pass for cause, Judge.

24 THE COURT: All right. Ms. Koran, how long have you
25 been in Las Vegas?

1 PROSPECTIVE JUROR KORAN: Four years, sir.
2 THE COURT: And where did you come from?
3 PROSPECTIVE JUROR KORAN: From California.
4 THE COURT: What did you do in California as far as
5 work was concerned before you left?
6 PROSPECTIVE JUROR KORAN: Administrative.
7 THE COURT: Where -- what?
8 PROSPECTIVE JUROR KORAN: In health care
9 administration.
10 THE COURT: All right. What do you do here, now?
11 PROSPECTIVE JUROR KORAN: I work at Sierra Health
12 Services in health and life insurance sales.
13 THE COURT: All right. Are you married?
14 PROSPECTIVE JUROR KORAN: No, divorced.
15 THE COURT: Children?
16 PROSPECTIVE JUROR KORAN: Two.
17 THE COURT: Any they old enough to work?
18 PROSPECTIVE JUROR KORAN: No.
19 THE COURT: Have you ever been in the military?
20 PROSPECTIVE JUROR KORAN: No.
21 THE COURT: Are you acquainted with anybody in law
22 enforcement?
23 PROSPECTIVE JUROR KORAN: No.
24 THE COURT: Ever been a victim of a crime?
25 PROSPECTIVE JUROR KORAN: No.

1 THE COURT: Have you or anyone closely associated
2 with you ever arrested for a crime?
3 PROSPECTIVE JUROR KORAN: No.
4 THE COURT: Ever serve on a jury before?
5 PROSPECTIVE JUROR KORAN: No.
6 THE COURT: Okay. If you're picked as a juror, the
7 -- might be divided into two phrases, the trial phase and the
8 penalty phase. If at the trial if you determine the defendant
9 is guilty of first degree murder, then the penalty phase kicks
10 in. The jury sets punishment according to law. You have
11 three options, life with the possibility of parole, life
12 without the possibility of parole, and the death penalty. Do
13 you understand that?
14 PROSPECTIVE JUROR KORAN: yes.
15 THE COURT: Could you equally consider each of those
16 options?
17 PROSPECTIVE JUROR KORAN: Yes.
18 THE COURT: Any reason you couldn't be a fair and
19 impartial juror?
20 PROSPECTIVE JUROR KORAN: No.
21 THE COURT: Thank you. Questions, pass for cause?
22 MR. ROGER: Thank you. How do you pronounce your
23 last name, ma'am?
24 PROSPECTIVE JUROR KORAN: Koran.
25 MR. ROGER: Ms. Koran, you have a friend who is an

1 attorney here in town?

2 PROSPECTIVE JUROR KORAN: No, he's not a friend at
3 all. He's an acquaintance I met once and spoke to him for
4 about one minute at a party.

5 MR. ROGER: Okay. And that was Mace Yampolsky?

6 PROSPECTIVE JUROR KORAN: Mm-hmm.

7 MR. ROGER: But you have a former boyfriend who is
8 an attorney, is that right?

9 PROSPECTIVE JUROR KORAN: Yes.

10 MR. ROGER: Is he an attorney here in town?

11 PROSPECTIVE JUROR KORAN: No, in California.

12 MR. ROGER: What type of attorney?

13 PROSPECTIVE JUROR KORAN: Employment for employers,
14 you know, he represents the employer in discrimination issues.

15 MR. ROGER: Okay. I'd like to talk to you a little
16 bit about the death penalty and what you might be facing as a
17 potential juror. Now, how do you feel about being asked to
18 make that type of decision?

19 PROSPECTIVE JUROR KORAN: Well, I feel that it would
20 have to be, you know, an important decision, that I would have
21 to make, and that with that I would have to consider both
22 mitigating and aggravating circumstances and all the facts and
23 evidence presented.

24 MR. ROGER: If you were a legislator and the
25 decision was solely up to you, would we have capital

1 punishment in the state of Nevada?
2 PROSPECTIVE JUROR KORAN: yes.
3 MR. ROGER: Why?
4 PROSPECTIVE JUROR KORAN: Because I believe that
5 some first degree murders do warrant the death penalty.
6 MR. ROGER: In answering questions in your
7 questionnaire, you talked about the death penalty only being
8 appropriate for the worst type of crime.
9 PROSPECTIVE JUROR KORAN: Mm-hmm.
10 MR. ROGER: When you used the term crime, were you
11 talking about murder or sexual assault?
12 PROSPECTIVE JUROR KORAN: First degree murder.
13 First degree murder only.
14 MR. ROGER: Okay. Are you open to all three forms
15 of punishment?
16 PROSPECTIVE JUROR KORAN: Yes, I am.
17 MR. ROGER: Assuming the circumstances were
18 appropriate, could you personally vote for the death penalty?
19 PROSPECTIVE JUROR KORAN: Yes.
20 MR. ROGER: But would you agree that it is a
21 difficult decision?
22 PROSPECTIVE JUROR KORAN: Yes.
23 MR. ROGER: Yet, you are willing to make that
24 commitment that if we prove the circumstances to you, you
25 would vote for the death penalty?

1 PROSPECTIVE JUROR KORAN: Yes.
2 MR. ROGER: Thank you. Pass for cause.
3 THE COURT: Questions, pass for cause?
4 MS. McMAHON: Just one, Your Honor. Good afternoon.
5 I have one question. On the form where it asks you to -- do
6 your comments about your opinions of attorneys.
7 PROSPECTIVE JUROR KORAN: Mm-hmm.
8 MS. McMAHON: Okay. Always a sensitive area, your
9 opinion of the defense attorneys was that they had a job to do
10 and it was important. Concomitantly, your opinion of public
11 defenders was that they don't want their job. Now, Mr.
12 LaPorta and I are public defenders and my concern about that
13 is if you assume we're doing something we don't want, will
14 that have a negative impact on how you look at my client?
15 Will that harm him in your deliberations?
16 PROSPECTIVE JUROR KORAN: I don't think they're
17 related.
18 MS. McMAHON: Thank you. That was the only question
19 I had.
20 THE COURT: Pass for cause?
21 MS. McMAHON: Pass for cause, Your Honor.
22 THE COURT: In the law, ladies and gentlemen, we
23 have what we call peremptory challenges. We've completed the
24 first initial questioning of the jury. Each side has a
25 certain number of peremptory challenge that they would either

1 exercise their peremptory challenge and excuse without any
2 cause or they could waive their peremptory challenge. So,
3 we're going to go through that and we're going to pick some
4 alternate jurors and hopefully complete the selection of the
5 jury shortly.

6 So, we'll go for some peremptory challenges now.
7 The state could exercise its first peremptory challenge if it
8 sees fit.

9 MR. ROGER: Judge, we'll thank and excuse Juror
10 Number 307, Melissa Jaime.

11 THE COURT: All right. Will Melissa please report
12 back to room 1013? The clerk call another prospective juror.

13 THE CLERK: Linda Piiparinen --

14 THE COURT: Linda --

15 THE CLERK: Badge 324.

16 THE COURT: Linda, please take that same seat. How
17 long have you been in Las Vegas?

18 PROSPECTIVE JUROR PIIPARINEN: Almost four years.

19 THE COURT: And where did you come from?

20 PROSPECTIVE JUROR PIIPARINEN: Northern Michigan.

21 THE COURT: What did you do there before you went --
22 came here to Las Vegas?

23 PROSPECTIVE JUROR PIIPARINEN: I was a nurse.

24 THE COURT: And what do you do here, now?

25 PROSPECTIVE JUROR PIIPARINEN: I'm a nurse.

1 THE COURT: Where?
2 PROSPECTIVE JUROR PIIPARINEN: THC Hospital.
3 THE COURT: What is that?
4 PROSPECTIVE JUROR PIIPARINEN: THC Hospital.
5 THE COURT: Where is that?
6 PROSPECTIVE JUROR PIIPARINEN: Transitional Hospital
7 Corporation.
8 THE COURT: Where is that?
9 PROSPECTIVE JUROR PIIPARINEN: It's on West Sahara.
10 THE COURT: Never heard of it.
11 PROSPECTIVE JUROR PIIPARINEN: It's a long-term
12 acute hospital.
13 THE COURT: Getting to be a big town now, you don't
14 hear of hospitals. You married?
15 PROSPECTIVE JUROR PIIPARINEN: Yes.
16 THE COURT: What does your husband do?
17 PROSPECTIVE JUROR PIIPARINEN: He's a social worker.
18 THE COURT: Children?
19 PROSPECTIVE JUROR PIIPARINEN: No.
20 THE COURT: You ever been in the military?
21 PROSPECTIVE JUROR PIIPARINEN: No.
22 THE COURT: You acquainted with anybody in law
23 enforcement?
24 PROSPECTIVE JUROR PIIPARINEN: Friends back in
25 Michigan.

1 THE COURT: That's not going to affect your
2 deliberation?
3 PROSPECTIVE JUROR PIIPARINEN: No.
4 THE COURT: You're not going to give greater weight
5 or lesser weight to a police officer's testimony simply
6 because they're a police officer, are you?
7 PROSPECTIVE JUROR PIIPARINEN: No.
8 THE COURT: Have you ever been a victim of a crime?
9 PROSPECTIVE JUROR PIIPARINEN: No.
10 THE COURT: Have you or anyone closely associated
11 with you ever been arrested for a crime?
12 PROSPECTIVE JUROR PIIPARINEN: No.
13 THE COURT: Ever serve on a jury before?
14 PROSPECTIVE JUROR PIIPARINEN: No.
15 THE COURT: If you're picked as a juror, ma'am, you
16 know, there might be two phases. The first phase for -- just
17 for -- I just call it the trial phase, you understand that?
18 PROSPECTIVE JUROR PIIPARINEN: Mm-hmm.
19 THE COURT: If the jury finds the defendant and only
20 if they find the defendant guilty of first degree murder, then
21 the penalty phase kicks in, right? And at the penalty phase
22 the jury determines the punishment, not the Judge, it's the
23 jury. Do you understand that?
24 PROSPECTIVE JUROR PIIPARINEN: Yes.
25 THE COURT: And the three options are life with the

1 possibility of parole, life without the possibility of parole,
2 and the imposition of the death penalty. Do you understand
3 that?

4 PROSPECTIVE JUROR PIIPARINEN: Yes.

5 THE COURT: Could you consider each option equally
6 and give it weight you deemed necessary and make a decision?

7 PROSPECTIVE JUROR PIIPARINEN: I would have
8 difficulty with parole on first degree murder.

9 THE COURT: Mm-hmm. Well, all we're asking is to
10 keep an open mind, and listen to the facts, and determine --

11 PROSPECTIVE JUROR PIIPARINEN: I could do that.

12 THE COURT: -- at least could you consider all the
13 options and then make a determination?

14 PROSPECTIVE JUROR PIIPARINEN: I could do that.

15 THE COURT: All right. Questions, pass for cause?

16 MR. ROGER: Pass for cause, Judge.

17 THE COURT: Questions, pass for cause?

18 MS. McMAHON: Just briefly. Good afternoon.

19 PROSPECTIVE JUROR PIIPARINEN: Hi.

20 MS. McMAHON: It's the question about the
21 alternative punishments. It was my sense there was a little
22 bit of hesitancy. If, in fact, you sat on the jury and if, in
23 fact, my client was found guilty, would you equally consider
24 all forms of punishment, that is, equal consideration to life
25 with the possibility of parole, the same consideration you

1 would give to life without or the death penalty? Can you meet
2 that requirement?

3 PROSPECTIVE JUROR PIIPARINEN: I would be biased
4 against life with the option of parole. I would have -- I
5 mean, I would have to -- I would have to work into considering
6 that equally.

7 MS. McMAHON: Your Honor, I would move to excuse the
8 juror for cause.

9 MR. ROGER: Judge, I have a few questions.

10 Ma'am, you understand that at the present time you
11 know absolutely nothing about this case, correct?

12 PROSPECTIVE JUROR PIIPARINEN: Just what we were
13 told and what I read in the paper.

14 MR. ROGER: But you know nothing about the
15 defendant's background, right?

16 PROSPECTIVE JUROR PIIPARINEN: Correct.

17 MR. ROGER: You know nothing about the crime except
18 you may have heard, right?

19 PROSPECTIVE JUROR PIIPARINEN: That is correct.

20 MR. ROGER: Are you willing to listen to all the
21 facts and circumstances about the crime and the defendant's
22 background in determining what punishment is appropriate?

23 PROSPECTIVE JUROR PIIPARINEN: I'm willing to
24 listen.

25 MR. ROGER: Are you -- do you have an open mind?

1 PROSPECTIVE JUROR PIIPARINEN: I think I have an
2 open mind.

3 MR. ROGER: Okay. Understand that all of us have
4 our own particular vents and feelings that come in to the
5 court, but what we're trying to find is people who are willing
6 to give both sides a fair shake. Are you that type of person?

7 PROSPECTIVE JUROR PIIPARINEN: Yes, I am.

8 MR. ROGER: Okay. Are you willing to reserve your
9 judgement until after you've heard all the evidence and the
10 arguments by the different sides?

11 PROSPECTIVE JUROR PIIPARINEN: Yes.

12 MR. ROGER: As you sit here now, are you willing to
13 give for the defense a fair shake?

14 PROSPECTIVE JUROR PIIPARINEN: I think our purpose
15 is to hear what happened and make a judgement on the evidence
16 that's presented. I've never been on jury before, but I think
17 that that's our responsibility and I think I can do that. I
18 do have a personal -- I mean, I just know that parole on some
19 crimes is something that I've always wondered about, and it's
20 something that is kind of like on a level of -- I sometimes
21 don't understand how that happens. So that -- that's what you
22 -- that's where my questioning of considering the three
23 options comes in.

24 MR. ROGER: Okay. Are you willing reserve judgement
25 until you find out what parole is all about?

1 PROSPECTIVE JUROR PIIPARINEN: Yes.
2 MR. ROGER: Okay. Judge, I would oppose the
3 challenge for cause.
4 THE COURT: Again, are you willing to consider
5 equally, after all the evidences and all the options, life
6 with the possibility of parole, life without the possibility
7 of parole, and the imposition of the death penalty?
8 PROSPECTIVE JUROR PIIPARINEN: Without knowing any
9 information, if I were -- if the -- if the verdict was first
10 degree murder, I could not consider with parole.
11 THE COURT: All right. Please report back to room
12 1013
13 PROSPECTIVE JUROR PIIPARINEN: Thank you.
14 THE COURT: Clerk call another prospective juror.
15 THE CLERK: Willie Luster, badge 325.
16 THE COURT: Mr. Luster, please take that same seat.
17 Again, we're here to question you regarding your
18 qualifications as a juror. And if, you know, if you're picked
19 as a juror, the first phase is a trial phase, do you
20 understand that?
21 PROSPECTIVE JUROR LUSTER: Yes, sir.
22 THE COURT: And if you find and only if you find
23 that the defendant is guilty of first degree murder, then we
24 go into the second phase, which is the penalty phase. Do you
25 understand that?

1 PROSPECTIVE JUROR LUSTER: I understand that, sir.
2 THE COURT: And then it's incumbent or it's up the
3 jury. I don't impose punishment as Judge. It's the jury that
4 imposes punishment. You understand that?
5 PROSPECTIVE JUROR LUSTER: Yes, sir.
6 THE COURT: And under our laws of Nevada, the
7 legislature, the Governor signed into law, it is basically you
8 have three options: Life with the possibility of parole, life
9 without the possibility of parole, or the imposition of the
10 death penalty. Do you understand that?
11 PROSPECTIVE JUROR LUSTER: Yes, sir.
12 THE COURT: Could you equally consider all those
13 options?
14 PROSPECTIVE JUROR LUSTER: No, sir.
15 THE COURT: Why not? What can't you consider?
16 PROSPECTIVE JUROR LUSTER: The parole part -- the
17 parole.
18 THE COURT: Life --
19 PROSPECTIVE JUROR LUSTER: With parole.
20 THE COURT: -- with parole?
21 PROSPECTIVE JUROR LUSTER: Yes, sir.
22 THE COURT: In other words, you would only consider
23 life without parole or death?
24 PROSPECTIVE JUROR LUSTER: Both of those two.
25 THE COURT: What?

1 PROSPECTIVE JUROR LUSTER: Both of the last two, but
2 not with parole.
3 THE COURT: You wouldn't consider life -- you
4 wouldn't consider giving a person convicted of first degree
5 murder life with the possibility of parole?
6 PROSPECTIVE JUROR LUSTER: No, sir.
7 THE COURT: Why not? Is that religious thing or is
8 it something --
9 PROSPECTIVE JUROR LUSTER: Because I think he --
10 once he's taken a life he -- he shouldn't be free again.
11 THE COURT: But our law, though, says that you're to
12 consider all three --
13 PROSPECTIVE JUROR LUSTER: The law --
14 THE COURT: -- because every case is different.
15 Every case is different.
16 PROSPECTIVE JUROR LUSTER: Well, I don't --
17 THE COURT: The age, the background of people, what
18 happened in the case, it's all different.
19 PROSPECTIVE JUROR LUSTER: I don't agree with the
20 law.
21 THE COURT: Pardon?
22 PROSPECTIVE JUROR LUSTER: I don't agree with that
23 part of the law.
24 THE COURT: Okay. Do you have anything to say?
25 MR. LaPORTA: No, Your Honor. I'll pass -- I'll --

1 we have no problems with this juror being excused.
2 THE COURT: You challenge for cause?
3 MR. LaPORTA: Yes, Your Honor.
4 MR. SCHWARTZ: No objection.
5 THE COURT: Please report back to room 1013. The
6 clerk will call another prospective juror.
7 THE CLERK: Deborah Smith.
8 THE COURT: Deborah Smith.
9 THE CLERK: Badge 326.
10 THE COURT: All right. Take that same seat, Ms.
11 Smith. Again, we'll question you as your qualifications as a
12 -- as a juror. If the jury determines at the trial phase that
13 the proper thing to do was find the defendant guilty of first
14 degree murder, then we go into the penalty phase. Do you
15 understand that?
16 PROSPECTIVE JUROR SMITH: Mm-hmm.
17 THE COURT: At the penalty phase we have three
18 options under our law: Life with the possibility of parole,
19 life without the possibility of parole, and the death penalty.
20 Do you understand that?
21 PROSPECTIVE JUROR SMITH: Mm-hmm. Yes.
22 THE COURT: Could you equally consider all of those
23 options?
24 PROSPECTIVE JUROR SMITH: No. The victims weren't
25 given an option.

1 THE COURT: Well, the victims weren't given an
2 option, but our law the jury an option of determining what
3 penalty is.
4 PROSPECTIVE JUROR SMITH: Right.
5 THE COURT: If we just had one rigid rule, I don't
6 know if that would be good. We'd have to have these options
7 available and the jury, after hearing all the evidence, would
8 consider those options. Could you -- you couldn't equally
9 consider them?
10 PROSPECTIVE JUROR SMITH: No.
11 THE COURT: Okay.
12 MR. LaPORTA: Challenge for cause, Your Honor.
13 THE COURT: All right. Report back to room 1013.
14 Clerk, call another prospective juror.
15 THE CLERK: Esther Cordova, number 327.
16 THE COURT: Ms. Cordova, again your qualifications
17 are if the jury finds the defendant of first degree murder
18 then there's a penalty phase and you have those three options.
19 Do you understand that?
20 PROSPECTIVE JUROR CORDOVA: Yes.
21 THE COURT: Could you equally consider those
22 options?
23 PROSPECTIVE JUROR CORDOVA: Yes, I could.
24 THE COURT: All right. How long have you been in
25 Las Vegas?

1 PROSPECTIVE JUROR CORDOVA: Twenty out of the past
2 twenty-two years.
3 THE COURT: What do you do for a living?
4 PROSPECTIVE JUROR CORDOVA: I'm a casino cage
5 manager at Fitzgerald's Casino.
6 THE COURT: Are you married?
7 PROSPECTIVE JUROR CORDOVA: No, sir.
8 THE COURT: Children?
9 PROSPECTIVE JUROR CORDOVA: One daughter, she's a
10 homemaker.
11 THE COURT: You ever been in the military?
12 PROSPECTIVE JUROR CORDOVA: No, sir.
13 THE COURT: Are you acquainted with anybody in law
14 enforcement?
15 PROSPECTIVE JUROR CORDOVA: No, I'm not.
16 THE COURT: Have you been a victim of a crime?
17 PROSPECTIVE JUROR CORDOVA: Home burglary that was
18 not resolved.
19 THE COURT: Never caught the individuals?
20 PROSPECTIVE JUROR CORDOVA: And domestic violence.
21 THE COURT: All right. That's not going to affect
22 your deliberation in this case, is it?
23 PROSPECTIVE JUROR CORDOVA: No, sir.
24 THE COURT: Have you or anyone closely associated
25 with you ever been arrested for a crime?

1 PROSPECTIVE JUROR CORDOVA: I was a on a DUI about
2 twelve to fifteen years ago.
3 THE COURT: All right. Was it a misdemeanor DUI?
4 PROSPECTIVE JUROR CORDOVA: Yes. It was settled out
5 of court.
6 THE COURT: Did you have to go to school? All
7 right. That's not going to affect your deliberations.
8 PROSPECTIVE JUROR CORDOVA: No, sir.
9 THE COURT: You don't hold that against the State of
10 Nevada, do you?
11 PROSPECTIVE JUROR CORDOVA: No, sir.
12 THE COURT: All right. You ever serve on a jury
13 before?
14 PROSPECTIVE JUROR CORDOVA: Yes, twice.
15 THE COURT: First time, was it a criminal or civil?
16 PROSPECTIVE JUROR CORDOVA: Criminal.
17 THE COURT: What was the charge?
18 PROSPECTIVE JUROR CORDOVA: Burglary.
19 THE COURT: Okay. Were you picked as a juror?
20 PROSPECTIVE JUROR CORDOVA: Yes, I was.
21 THE COURT: You deliberated the case?
22 PROSPECTIVE JUROR CORDOVA: Yes, I did.
23 THE COURT: Were you picked as foreperson?
24 PROSPECTIVE JUROR CORDOVA: No, sir.
25 THE COURT: Without telling me what the verdict was,

1 did you reach a verdict?
2 PROSPECTIVE JUROR CORDOVA: Yes, we did.
3 THE COURT: The second one, was it civil or
4 criminal?
5 PROSPECTIVE JUROR CORDOVA: It was a felon in
6 possession of a firearm.
7 THE COURT: All right. Criminal. Were you picked
8 as a juror?
9 PROSPECTIVE JUROR CORDOVA: Yes, sir.
10 THE COURT: And were you picked as foreperson?
11 PROSPECTIVE JUROR CORDOVA: No.
12 THE COURT: You deliberated the case?
13 PROSPECTIVE JUROR CORDOVA: Yes.
14 THE COURT: Without telling me what the verdict was,
15 did your jury reach a verdict?
16 PROSPECTIVE JUROR CORDOVA: Yes.
17 THE COURT: Any reason you couldn't be a fair and
18 impartial juror in this case?
19 PROSPECTIVE JUROR CORDOVA: No, sir.
20 THE COURT: All right. Thank you. Questions, pass
21 for cause.
22 MR. ROGER: Pass for cause, Your Honor.
23 MR. LaPORTA: I have a few questions, Your Honor.
24 THE COURT: Certainly.
25 MR. LaPORTA: Ms. Cordova, good afternoon. I want

1 to get into a couple of questions that you answered in this
2 and this gives me an opportunity to ask you about some things
3 that people -- or, the attorneys in this case have not asked.
4 And that is, you answered question 91, part A, B and C. And
5 to refresh your memory it said, do you feel that if one is
6 convicted of first degree murder, intended to do exactly what
7 the state claims he did, should be sentenced to death without
8 consideration of background information. And then B was, life
9 in prison without the possibility of parole and then C was,
10 life in prison with the possibility of parole. Your answer
11 was possibly and then in each area where you could explain you
12 said, only specific history directly related to the crime
13 should be considered, okay.

14 Now, I think a fair reading of that is that you will only
15 consider when it comes to those three possible punishments
16 crimes -- I mean, the facts that relate to the crime. Is that
17 a correct interpretation?

18 PROSPECTIVE JUROR CORDOVA: I don't think I fully
19 understood the question at the time and with what I've heard
20 this morning and asking previous people, I understand what it
21 is you're asking and any information that was presented would
22 have --

23 MR. LaPORTA: Okay.

24 PROSPECTIVE JUROR CORDOVA: -- would have be
25 weighed.

1 MR. LaPORTA: You understand that if there's a
2 penalty phase, the State will present aggravating
3 circumstances and other evidence?
4 PROSPECTIVE JUROR CORDOVA: Yes.
5 MR. LaPORTA: You understand that. And the defense
6 will present mitigating circumstances, you understand that?
7 PROSPECTIVE JUROR CORDOVA: Yes.
8 MR. LaPORTA: And you understand that you can only
9 consider the death penalty if the State proves beyond a
10 reasonable doubt at least one of their aggravators?
11 PROSPECTIVE JUROR CORDOVA: Yes.
12 MR. LaPORTA: Okay. Now, you also understand that
13 you don't have to impose the death penalty, even though the
14 State has done that?
15 PROSPECTIVE JUROR CORDOVA: Yes.
16 MR. LaPORTA: Proved beyond a reasonable doubt, one
17 of the aggravators. You can chose one of the other two
18 punishments?
19 PROSPECTIVE JUROR CORDOVA: Yes.
20 MR. LaPORTA: All right. You can totally reject
21 that?
22 PROSPECTIVE JUROR CORDOVA: Yes.
23 MR. LaPORTA: You can consider all three equally?
24 PROSPECTIVE JUROR CORDOVA: Yes, I can.
25 MR. LaPORTA: You can consider or conceive of a

1 situation or a set of circumstances where you had just
2 convicted a man of first degree murder of two homicides and
3 you could still consider life with or without the possibility
4 of parole?
5 PROSPECTIVE JUROR CORDOVA: I could consider all of
6 them based on the evidence that would be presented.
7 MR. LaPORTA: Fine. Pass for cause, Your Honor.
8 THE COURT: All right. The defense first peremptory
9 challenge?
10 MR. LaPORTA: Your Honor, the defense thanks and
11 excuses Juror Number 303, Ms. Bell, I believe it is.
12 THE COURT: All right. Please report back to room
13 1013. What's is this now -- what's your name?
14 PROSPECTIVE JUROR BELL: Holly Bell.
15 THE COURT: All right. Clerk will now call another
16 prospective juror.
17 THE CLERK: Bradley Parker, number 328.
18 THE COURT: Please take that same seat up there, Mr.
19 Parker, all right?
20 PROSPECTIVE JUROR PARKER: Yep.
21 THE COURT: Again, we're going to question you
22 regarding your qualifications to serve as juror, Mr. Parker,
23 as a juror. If there's two phases to this type of case, a
24 murder case, where the State is going to ask for the death
25 penalty, at least. The first phase is the trial phase. If

1 the jury finds the defendant guilty of first degree murder
2 then we have a penalty phase and it's up the jury to pick the
3 punishment. You understand that?

4 PROSPECTIVE JUROR PARKER: Mm-hmm.

5 THE COURT: And the possibility punishment for life
6 with the possibility of parole, life without the possibility
7 of parole, and the imposition of the death penalty. Do you
8 understand that?

9 PROSPECTIVE JUROR PARKER: Yep.

10 THE COURT: Could you equally consider each of those
11 options?

12 PROSPECTIVE JUROR PARKER: Yes.

13 THE COURT: How long have you been in Las Vegas?

14 PROSPECTIVE JUROR PARKER: One year.

15 THE COURT: And where did you come from, sir?

16 PROSPECTIVE JUROR PARKER: Rose Lake, Idaho.

17 THE COURT: And what did you do as far as work was
18 concerned in Idaho?

19 PROSPECTIVE JUROR PARKER: Logging.

20 THE COURT: Well, what do you do here now that
21 you're here?

22 PROSPECTIVE JUROR PARKER: I'm a mechanic for Toro.

23 THE COURT: For who?

24 PROSPECTIVE JUROR PARKER: Toro, Simpson Norton.

25 THE COURT: Yeah. Are you married?

1 PROSPECTIVE JUROR PARKER: Nope.
2 THE COURT: Children?
3 PROSPECTIVE JUROR PARKER: Nope.
4 THE COURT: You ever been in the military?
5 PROSPECTIVE JUROR PARKER: Nope.
6 THE COURT: You acquainted with anybody in law
7 enforcement?
8 PROSPECTIVE JUROR PARKER: Nope.
9 THE COURT: Have you ever been the victim of a
10 crime?
11 PROSPECTIVE JUROR PARKER: Yep.
12 THE COURT: What was that?
13 PROSPECTIVE JUROR PARKER: Me and a friend of mine
14 got jumped in Palm Springs by a bunch of people.
15 THE COURT: Oh. Did they catch the individual?
16 PROSPECTIVE JUROR PARKER: Nope.
17 THE COURT: You never had to appear in Court or
18 anything?
19 PROSPECTIVE JUROR PARKER: Nope.
20 THE COURT: That's not going to affect your
21 deliberation? Have you or anyone closely associated with you
22 ever been arrested for a crime?
23 PROSPECTIVE JUROR PARKER: Yes.
24 THE COURT: Who's that?
25 PROSPECTIVE JUROR PARKER: My brother stole a car

1 here and there and drugs. He's always in jail.
2 THE COURT: Yeah.
3 PROSPECTIVE JUROR PARKER: And my brother-in-law was
4 arrested for manslaughter and a good friend of mine was
5 arrested for manslaughter.
6 THE COURT: Are they -- what were -- what were the
7 results of those manslaughter cases?
8 PROSPECTIVE JUROR PARKER: Both of them were
9 innocent.
10 THE COURT: Okay. So they never -- they're not
11 spending any time in prison --
12 PROSPECTIVE JUROR PARKER: No.
13 THE COURT: All right. The fact that you had some
14 friends and relatives involved, that's not going to affect
15 your deliberation in this case, is it?
16 PROSPECTIVE JUROR PARKER: No.
17 THE COURT: You don't hold that against the State of
18 Nevada for anything, do you?
19 PROSPECTIVE JUROR PARKER: No.
20 THE COURT: All right. You ever serve on a jury
21 before?
22 PROSPECTIVE JUROR PARKER: Nope.
23 THE COURT: You understand that Mr. Thomas is here
24 by what we call an information, it's a charging document
25 charging him with serious crimes, you understand that?

1 PROSPECTIVE JUROR PARKER: Yes.
2 THE COURT: But it's a mere accusation and not --
3 it's not evidence. You understand that?
4 PROSPECTIVE JUROR PARKER: Yes.
5 THE COURT: And he's presumed to be innocent until
6 proven guilty. You understand that?
7 PROSPECTIVE JUROR PARKER: Yes.
8 THE COURT: And it's incumbent upon the State of
9 Nevada to prove Mr. Thomas guilty beyond a reasonable doubt.
10 You understand that?
11 PROSPECTIVE JUROR PARKER: Yes.
12 THE COURT: Is there any reason you couldn't be fair
13 and impartial in this case?
14 PROSPECTIVE JUROR PARKER: No.
15 THE COURT: Thank you, sir. Questions, pass for
16 cause?
17 MR. ROGER: Yes. Mr. Parker, you say your brother
18 has been arrested on a prior occasion for stealing cars or
19 possession of stolen cars.
20 PROSPECTIVE JUROR PARKER: Yeah, and he's a -- big
21 drug use, steals cars to buy drugs here and there and all that
22 kind of stuff.
23 MR. ROGER: Where does he live?
24 PROSPECTIVE JUROR PARKER: In north Idaho now. He's
25 in jail up there.

1 MR. ROGER: Are you close to that brother?
2 PROSPECTIVE JUROR PARKER: Oh, yeah. When he's out
3 of jail.
4 MR. ROGER: Okay. How do you feel about the way the
5 criminal justice system has dealt with your brother?
6 PROSPECTIVE JUROR PARKER: Oh, pretty good, I guess.
7 They do what they have to do.
8 MR. ROGER: Okay. You had two friends or relatives
9 who've been arrested for manslaughter?
10 PROSPECTIVE JUROR PARKER: Mm-hmm.
11 MR. ROGER: Well, were these people close to you?
12 PROSPECTIVE JUROR PARKER: Yes.
13 MR. ROGER: How did you feel when you learned of
14 their arrest?
15 PROSPECTIVE JUROR PARKER: Oh, boy, I don't know. I
16 really don't remember.
17 MR. ROGER: Did you feel that it was out of
18 character for them?
19 PROSPECTIVE JUROR PARKER: Oh, yeah.
20 MR. ROGER: Okay. Both went to trial before a jury?
21 PROSPECTIVE JUROR PARKER: Yes.
22 MR. ROGER: And both were acquitted?
23 PROSPECTIVE JUROR PARKER: Yes.
24 MR. ROGER: Did you go to those trials?
25 PROSPECTIVE JUROR PARKER: Yes.

1 MR. ROGER: Did you feel that the jury made the
2 right decision?
3 PROSPECTIVE JUROR PARKER: Oh, yes.
4 MR. ROGER: What are your feelings about the death
5 penalty?
6 PROSPECTIVE JUROR PARKER: Oh, I don't know. I've
7 never really even thought about it that much.
8 MR. ROGER: Did either one of your friends face the
9 death penalty?
10 PROSPECTIVE JUROR PARKER: No.
11 MR. ROGER: Well, this is a very important decision,
12 would you agree, determining whether or not someone should
13 live or die?
14 PROSPECTIVE JUROR PARKER: Yes.
15 MR. ROGER: Do you think that you have the qualities
16 which would allow you to make such a serious decision?
17 PROSPECTIVE JUROR PARKER: I think so, I'm not sure.
18 MR. ROGER: What qualities do you think that you
19 have in order to make that decision?
20 PROSPECTIVE JUROR PARKER: I don't know.
21 MR. ROGER: If the decision were solely up to you,
22 would we have the death penalty?
23 PROSPECTIVE JUROR PARKER: Yeah.
24 MR. ROGER: You believe that you're the type of
25 person who could vote for the death penalty?

1 PROSPECTIVE JUROR PARKER: Yes.
2 MR. ROGER: When you filled out the questionnaire,
3 did you understand all of the questions or were some of them
4 tricky?
5 PROSPECTIVE JUROR PARKER: Well, some of them I
6 didn't understand.
7 MR. ROGER: Okay. You indicated on your
8 questionnaire that you could not personally vote for the death
9 penalty. Has your mind changed from that point until today or
10 is that your true feelings?
11 PROSPECTIVE JUROR PARKER: That's my true feeling.
12 MR. ROGER: Understanding that there's no right or
13 wrong answer and that people's own personal opinions are
14 simply that, personal opinions, and you're certainly entitled
15 to it, you are telling us that you could not personally vote
16 for the death penalty?
17 PROSPECTIVE JUROR PARKER: If it was just me, no.
18 MR. ROGER: Thank you. Challenge for cause.
19 THE COURT: I don't understand. You just told me a
20 minute ago, and that's why I started my questioning, that you
21 could equally consider that the jury -- it's up to the jury to
22 determine whether -- what penalty imposed, life with the
23 possibility of parole, life without the possibility of parole,
24 and the imposition of the death penalty. Didn't I ask you
25 that question?

1 PROSPECTIVE JUROR PARKER: You did.
2 THE COURT: And you said, yeah, you could equally
3 consider it.
4 PROSPECTIVE JUROR PARKER: Yeah, through the jury --
5 THE COURT: So not what are you saying now?
6 PROSPECTIVE JUROR PARKER: -- not just myself.
7 THE COURT: Huh?
8 PROSPECTIVE JUROR PARKER: Not myself. I couldn't.
9 THE COURT: Well, you're going to -- if you're part
10 of the jury of twelve, you're going to be in that jury
11 deliberation room and they're going to ask you how you vote,
12 and what are you going to -- I mean, would you equally
13 consider all of those three options?
14 PROSPECTIVE JUROR PARKER: I kind of changed my
15 mind.
16 THE COURT: That's the whole question. I mean if --
17 PROSPECTIVE JUROR PARKER: I don't think I could.
18 THE COURT: Why didn't you tell me that in the
19 beginning? It would have saved a few minutes.
20 PROSPECTIVE JUROR PARKER: Yeah, well, all right.
21 THE COURT: Huh? You can't -- you would never vote
22 for the death penalty?
23 PROSPECTIVE JUROR PARKER: Now that I think about
24 it, no.
25 THE COURT: There's a challenge for cause.

1 MS. McMAHON: Your Honor, if I may just briefly.
2 Did I understand you to say earlier that you believe
3 that the death penalty was a valid form of punishment?
4 PROSPECTIVE JUROR PARKER: Yeah.
5 MS. McMAHON: Okay. But the problem, if I
6 understand correctly, is you believe it's viable, it's an
7 alternative but if you sat on a jury, there are no
8 circumstances when you wouldn't consider the death penalty?
9 PROSPECTIVE JUROR PARKER: I don't -- I don't think
10 so.
11 MS. McMAHON: Thank you. I have no further
12 questions.
13 THE COURT: All right. Report back to room 1013.
14 The clerk call out a prospective juror.
15 THE CLERK: Barbara Warehime, number 329.
16 THE COURT: Please take that same seat up there, Ms.
17 Warehime. I'm going to ask -- start right away, Ms. Warehime,
18 you've had -- you've heard the questions that I have to ask,
19 is that correct?
20 PROSPECTIVE JUROR WAREHIME: Mm-hmm, yes, I have.
21 THE COURT: If you were picked as a juror and you
22 found the defendant guilty of first degree murder, then the
23 penalty phase kicks in. Do you understand that?
24 PROSPECTIVE JUROR WAREHIME: Yes, I do.
25 THE COURT: And you have three options under the

1 State of Nevada.
2 PROSPECTIVE JUROR WAREHIME: Yes.
3 THE COURT: Life with the possibility of parole,
4 life without the possibility of parole, and the imposition of
5 the death penalty.
6 PROSPECTIVE JUROR WAREHIME: Yes.
7 THE COURT: Could you equally consider all of those
8 options and render a verdict that's fair in your mind?
9 PROSPECTIVE JUROR WAREHIME: Yes, I could.
10 THE COURT: How long have you been in Las Vegas?
11 PROSPECTIVE JUROR WAREHIME: Seventeen years.
12 THE COURT: And what do you do for a living?
13 PROSPECTIVE JUROR WAREHIME: I'm a pharmacy
14 technician at -- where I work with Sav-On.
15 THE COURT: And are you married?
16 PROSPECTIVE JUROR WAREHIME: No, I'm not.
17 THE COURT: Children?
18 PROSPECTIVE JUROR WAREHIME: No.
19 THE COURT: Have you ever been in the military?
20 PROSPECTIVE JUROR WAREHIME: No.
21 THE COURT: Are you acquainted with anybody in law
22 enforcement?
23 PROSPECTIVE JUROR WAREHIME: Not in law enforcement,
24 no.
25 THE COURT: Have you ever been a victim of a crime?

1 PROSPECTIVE JUROR WAREHIME: Recently, yes.
2 THE COURT: What was that?
3 PROSPECTIVE JUROR WAREHIME: About four months ago
4 there was a drive-by shooting at my house.
5 THE COURT: Were they after you or somebody else or
6 it was an accident or something?
7 PROSPECTIVE JUROR WAREHIME: I think it was just a
8 mistake in identity. There was six shots fired, but I think
9 that they just mistook our house for someone else's.
10 THE COURT: Nobody was hurt, I hope?
11 PROSPECTIVE JUROR WAREHIME: No, no one was hurt.
12 THE COURT: Did they ever catch the individuals?
13 PROSPECTIVE JUROR WAREHIME: No, they didn't.
14 THE COURT: All right, given that fact, that's not
15 going to affect your deliberation in this case, is it?
16 PROSPECTIVE JUROR WAREHIME: No, not at all.
17 THE COURT: Have you or anyone closely associated
18 with you been arrested for a crime?
19 PROSPECTIVE JUROR WAREHIME: No.
20 THE COURT: Did you ever serve on a jury before?
21 PROSPECTIVE JUROR WAREHIME: No, I haven't.
22 THE COURT: Any reason you couldn't be fair and
23 impartial?
24 PROSPECTIVE JUROR WAREHIME: There's no reason I
25 couldn't.

1 THE COURT: Thank you very much. Question, pass for
2 cause?
3 MR. ROGER: Just one question, Your Honor.
4 Judge Bonaventure asked you about considering
5 equally all three options of punishment; death penalty, life
6 imprisonment with and life imprisonment without the
7 possibility of parole. Now, if you were sitting on a jury and
8 you have to make that decision, could you envision a situation
9 where you yourself could vote for the death penalty?
10 PROSPECTIVE JUROR WAREHIME: Yes, I could --
11 MR. ROGER: Okay.
12 PROSPECTIVE JUROR WAREHIME: -- with the pending
13 circumstances.
14 MR. ROGER: Okay. So if the State presented
15 evidence that you felt warranted the imposition of the death
16 penalty, you could sentence this defendant, who be here in
17 this courtroom, to death?
18 PROSPECTIVE JUROR WAREHIME: If the circumstances
19 and the background, with everything else, I could.
20 MR. ROGER: Thank you. Pass for cause, Your Honor.
21 THE COURT: Questions, pass for cause?
22 MR. LaPORTA: Thank you, Judge.
23 Ma'am, you understand that during the penalty phase,
24 is there one such phase, that the State will present evidence
25 of aggravation, aggravators and that they have to prove one

1 aggravator beyond a reasonable doubt in order for you to be
2 able to chose the possibility of the death penalty. Do you
3 understand that?

4 PROSPECTIVE JUROR WAREHIME: Yes, I do.

5 MR. LaPORTA: You understand also that you're under
6 -- you don't have to impose the death penalty despite the fact
7 you've found beyond a reasonable doubt there's at least one
8 aggravator?

9 PROSPECTIVE JUROR WAREHIME: Yes, I do.

10 MR. LaPORTA: That there are two other possible
11 punishments and you can consider all three equally?

12 PROSPECTIVE JUROR WAREHIME: Yes, I could.

13 MR. LaPORTA: And you can conceive of a situation
14 where you've just convicted a person of first degree murder,
15 times two, two individuals, and you would still conceive of a
16 set of circumstances where you could choose one of the lives?

17 PROSPECTIVE JUROR WAREHIME: Yes, I could.

18 MR. LaPORTA: No further questions, Your Honor.
19 Pass for cause.

20 THE COURT: The State's next peremptory challenge.

21 MR. ROGER: Judge, we'll thank and excuse Jury
22 Number 329, Barbara Warehime.

23 THE COURT: Please report back to room 1013. The
24 clerk will call another prospective juror.

25 THE CLERK: Charles Nelson, number 330.

1 THE COURT: Take that same seat up there, Mr.
2 Nelson. How long have you been in Las Vegas?
3 PROSPECTIVE JUROR NELSON: Seven years.
4 THE COURT: All right. Well, again, Mr. Nelson,
5 this is the type of case that might, and the Government says
6 might be involved in two phases, you understand that?
7 PROSPECTIVE JUROR NELSON: Yes, I do.
8 THE COURT: If you're picked as a jury, first you'll
9 hear evidence to determine whether or not Mr. Thomas is guilty
10 beyond a reasonable doubt. If the jury finds him guilty
11 beyond a reasonable doubt of first degree murder, then there's
12 a penalty phase. Do you understand that?
13 PROSPECTIVE JUROR NELSON: Yes, I do.
14 THE COURT: And then the State of Nevada says that
15 the jury determines punishment. Do you understand that?
16 PROSPECTIVE JUROR NELSON: Yes, I do.
17 THE COURT: And there's three options, life with the
18 possibility of parole, life without the possibility of parole,
19 and imposition of the death penalty. Do you understand that?
20 PROSPECTIVE JUROR NELSON: Yes, I do.
21 THE COURT: And could you equally consider each of
22 those options?
23 PROSPECTIVE JUROR NELSON: I would, but I'd
24 preference for the murder and life sentence. The parole, I
25 would have to kind of --

1 THE COURT: I just want to understand.
2 PROSPECTIVE JUROR NELSON: I would have to give a
3 lot of consideration on the parole end of it, due to the type
4 of case this represents, if you know what I mean.
5 THE COURT: I really don't, but all I'm -- all I
6 want to know, you have a mind set that you could equally
7 consider all of the options --
8 PROSPECTIVE JUROR NELSON: Yes, yes, I could.
9 THE COURT: -- and then make your decision based
10 upon the evidence?
11 PROSPECTIVE JUROR NELSON: I could, yeah.
12 THE COURT: All right. How long have you been in
13 Las Vegas?
14 PROSPECTIVE JUROR NELSON: Seven years.
15 THE COURT: And what do you do for a living?
16 PROSPECTIVE JUROR NELSON: I work at the Mirage.
17 THE COURT: What do you do at the Mirage?
18 PROSPECTIVE JUROR NELSON: I'm a clerk.
19 THE COURT: Are you married?
20 PROSPECTIVE JUROR NELSON: No, I'm not.
21 THE COURT: Children?
22 PROSPECTIVE JUROR NELSON: Yes.
23 THE COURT: Any working?
24 PROSPECTIVE JUROR NELSON: Yeah, one in the -- who
25 works for the Stratosphere and another one just graduated from

1 UNLV, and she's part-time at Sav-On.
2 THE COURT: All right. Have you been in the
3 military?
4 PROSPECTIVE JUROR NELSON: Yes, I have.
5 THE COURT: Are you acquainted with anybody in law
6 enforcement?
7 PROSPECTIVE JUROR NELSON: No, sir.
8 THE COURT: Have you ever been a victim of a crime?
9 PROSPECTIVE JUROR NELSON: No, sir.
10 THE COURT: You or anyone closely associated with
11 you ever been arrested for a crime?
12 PROSPECTIVE JUROR NELSON: No, sir.
13 THE COURT: You ever serve on a jury before?
14 PROSPECTIVE JUROR NELSON: No, sir.
15 THE COURT: All right. Questions?
16 MR. ROGER: Yes. When you said that you'd have to
17 give some consideration to life with the possibility of
18 parole, what did you mean?
19 PROSPECTIVE JUROR NELSON: Well, I -- due to the
20 severity of the crime and that, if it was a preference it
21 would be -- if it come to that, the death penalty, you know,
22 no thought of parole. I mean -- but I would consider the
23 element of the third option.
24 MR. ROGER: Okay. So as you sit here, right down,
25 recognizing that you know nothing about this case, you're open

1 to all three forms of punishment?
2 PROSPECTIVE JUROR NELSON: In that sense, I am, yes,
3 sir.
4 MR. ROGER: And you're willing to base your decision
5 upon the evidence and nothing else?
6 PROSPECTIVE JUROR NELSON: Yes, sir.
7 MR. ROGER: Thank you. Pass for cause.
8 THE COURT: Questions, pass for cause?
9 MS. McMAHON: Yes, briefly, Your Honor. Thank you.
10 Good afternoon, Mr. Nelson. I wanted to ask you a
11 few questions about the questionnaire and I realize when the
12 questionnaire was filled out you didn't have the information
13 you now have.
14 PROSPECTIVE JUROR NELSON: Right.
15 MS. McMAHON: The questionnaire asks in two
16 different places whether a defendant in a criminal case should
17 be required to prove his or her innocence. In both of those
18 you answered in the affirmative. Do you understand that in
19 fact, the burden is entirely on the State to prove any
20 defendant guilty, that no defendant has the burden of proving
21 innocence?
22 PROSPECTIVE JUROR NELSON: Yes.
23 MS. McMAHON: And do you agree with that?
24 PROSPECTIVE JUROR NELSON: Yes.
25 MS. McMAHON: You heard me ask other potential

1 jurors before yourself about the statement in the
2 questionnaire that should, in fact, Marlo be convicted of
3 first degree murder, in determining the appropriate penalty,
4 that you're required to consider certain factors; health,
5 childhood experiences, et cetera. Now, in filling out the
6 questionnaire, you remarked that you would probably or
7 possibly consider it. Do you understand that, in fact, if you
8 sit on the jury and there is a conviction, that you need to
9 consider that information in arriving to your decision?

10 PROSPECTIVE JUROR NELSON: Right.

11 MS. McMAHON: Now, I have some concerns about
12 consideration of possible penalties. Should Marlo be
13 convicted and you are on the jury, the question is not could
14 you equally consider the three alternative forms of
15 punishment, but would you? Would you fairly consider life
16 without the possibility of parole and life with the
17 possibility of parole and the death penalty? Or would you,
18 because of your beliefs, be more inclined to give unequal
19 consideration because of your beliefs?

20 PROSPECTIVE JUROR NELSON: I'd give equal.

21 MS. McMAHON: You would. And you would be capable
22 of doing that? Okay. Thank you, Mr. Nelson. I have no
23 further questions.

24 PROSPECTIVE JUROR NELSON: Okay.

25 MS. McMAHON: I'd pass for cause, Judge.

1 THE COURT: The defense next peremptory challenge?
2 MS. McMAHON: May I have the Court's indulgence,
3 Judge?
4 Your Honor, the defense would thank and excuse Juror
5 Number 305, Mr. Wood.
6 THE COURT: All right, sir, please return to room
7 1013. The clerk call another prospective juror.
8 THE CLERK: Raymond Thayer, number 331.
9 THE COURT: How long have you been in Las Vegas,
10 sir?
11 PROSPECTIVE JUROR THAYER: Sixteen years.
12 THE COURT: All right. Again, we're here to
13 determine voir dire in the jury to get a fair and impartial
14 jury, Mr. Thayer. And you have -- will have known by now that
15 this type of case could go into two phases. One is the trial
16 phase, and if the jury finds Mr. Thomas guilty of first degree
17 murder then under the laws of the State of Nevada they
18 determine the punishment. The three options are life with the
19 possibility of parole, life without the possibility of parole,
20 and the death penalty. Do you understand that?
21 PROSPECTIVE JUROR THAYER: Yes, sir.
22 THE COURT: Could you equally consider all of those
23 options?
24 PROSPECTIVE JUROR THAYER: Yes, sir.
25 THE COURT: And what do you do for a living?

1 PROSPECTIVE JUROR THAYER: I deliver bottled water.
2 THE COURT: All right. Are you married?
3 PROSPECTIVE JUROR THAYER: No.
4 THE COURT: Children?
5 PROSPECTIVE JUROR THAYER: Yes, three.
6 THE COURT: Any old enough to work or not?
7 PROSPECTIVE JUROR THAYER: No.
8 THE COURT: Have you ever been in the military?
9 PROSPECTIVE JUROR THAYER: No.
10 THE COURT: Are you acquainted with anybody in law
11 enforcement?
12 PROSPECTIVE JUROR THAYER: Yes, my brother-in-law's
13 a police office in Peoria, Arizona, and my step-father's a
14 retired police office in Lake Havasu City, Arizona.
15 THE COURT: All right. Again, I follow that with a
16 question, you're not to give greater weight or lesser weight
17 to a police officer's testimony simply because they're a
18 police officer. Do you understand that?
19 PROSPECTIVE JUROR THAYER: Yes, sir.
20 THE COURT: Have you ever been a victim of a crime?
21 PROSPECTIVE JUROR THAYER: No.
22 THE COURT: Have you or anyone closely associated
23 with you ever been arrested for a crime?
24 PROSPECTIVE JUROR THAYER: Yes, sir.
25 THE COURT: Who was that?

1 PROSPECTIVE JUROR THAYER: Me.
2 THE COURT: What were you arrested for?
3 PROSPECTIVE JUROR THAYER: 1985 for battery,
4 substantial bodily harm. I came in front of you. In '94 --
5 THE COURT: A long time ago.
6 PROSPECTIVE JUROR THAYER: Yeah.
7 THE COURT: That was in Justice Court when I was a
8 Justice of the Peace?
9 PROSPECTIVE JUROR THAYER: I don't know.
10 THE COURT: All right. What were the results of
11 that case?
12 PROSPECTIVE JUROR THAYER: It was dismissed as long
13 as I left the individual alone.
14 THE COURT: All right.
15 PROSPECTIVE JUROR THAYER: Which I did, and it was
16 dismissed.
17 THE COURT: Anything else?
18 PROSPECTIVE JUROR THAYER: I got a DUI in '94 and I
19 got a felony theft in '95, but that's been reduced to a
20 misdemeanor, so I'm paying restitution, and I also have a
21 public defender as my lawyer.
22 THE COURT: Who's that?
23 PROSPECTIVE JUROR THAYER: Doug Gardner.
24 THE COURT: All right. The fact that you've had
25 that colorful career, let me just -- is that going to make

1 your deliberation in this case? Is that going to affect your
2 deliberation in this case?
3 PROSPECTIVE JUROR THAYER: No, sir.
4 THE COURT: That fact that I was your Judge, is that
5 going to affect your deliberation? You don't like me or
6 whatever it is, or not?
7 PROSPECTIVE JUROR THAYER: No. That has --
8 MR. ROGER: Judge, I'm sorry. We have a
9 stipulation.
10 THE COURT: Oh, all right.
11 MR. LaPORTA: We'll stipulate on this, Your Honor.
12 Considering the fact that he's appeared before you, before
13 Your Honor, to appear -- to avoid any appearance of
14 impropriety we'll -- and the other matters, we'll stipulate
15 to --
16 MR. ROGER: His excusal.
17 MR. LaPORTA: -- his excusal, Your Honor.
18 THE COURT: You'd be good at like a four or five
19 week civil trial or something. Report back to room 1013, sir.
20 Thank you.
21 Clerk, call another prospective juror.
22 THE CLERK: Rosalinda Ortiz, number 332.
23 THE COURT: Hello, Ms. Ortiz, is it?
24 PROSPECTIVE JUROR ORTIZ: Yes.
25 THE COURT: Ms. Ortiz, again, this type of case

1 might go into two phases. The first phase will be the trial
2 phase, and if the jury finds the defendant guilty of first
3 degree murder, then the penalty phase kicks in. You
4 understand that?

5 PROSPECTIVE JUROR ORTIZ: Yes, I do.

6 THE COURT: See, in Nevada the jury determines
7 punishment. You understand that, in a first degree murder
8 case?

9 PROSPECTIVE JUROR ORTIZ: Yes.

10 THE COURT: And you have three options: Life with
11 the possibility of parole, life without the possibility of
12 parole, and the imposition of the death penalty. Do you
13 understand that?

14 PROSPECTIVE JUROR ORTIZ: Yes.

15 THE COURT: And would you equally consider all of
16 those options equally?

17 PROSPECTIVE JUROR ORTIZ: No, I can't.

18 THE COURT: Why not?

19 PROSPECTIVE JUROR ORTIZ: I personally don't believe
20 in the death penalty because of religious belief.

21 THE COURT: What religion is that?

22 PROSPECTIVE JUROR ORTIZ: I'm Catholic, and since I
23 was a child, you don't take the life of a person, no matter
24 what. So I'll be kind of biased to where, you know, if I'm
25 chosen as a juror, I'll be kind of biased to make that

1 decision, if I'm -- if I'm --
2 MR. ROGER: Challenge for cause.
3 THE COURT: Was that --
4 MS. McMAHON: No, Your Honor.
5 THE COURT: All right. Report back to room 1013.
6 The clerk will call another prospective juror.
7 THE CLERK: William Layton, number 334.
8 THE COURT: Mr. Layton, take that same seat, Mr.
9 Layton. Again, this case might be involved in two phases.
10 One would be the trial phase and if the jury found the
11 defendant guilty of first degree murder then it would -- the
12 penalty phase would kick in. You understand that?
13 PROSPECTIVE JUROR LAYTON : Yes.
14 THE COURT: Then you -- the jury would have the
15 option of life with the possibility of parole, life without
16 the possibility of parole, and the imposition of the death
17 penalty. Do you understand that?
18 PROSPECTIVE JUROR LAYTON: Yes.
19 THE COURT: Would you equally consider all of those
20 options?
21 PROSPECTIVE JUROR LAYTON: Yes.
22 THE COURT: How long have you been in Las Vegas?
23 PROSPECTIVE JUROR LAYTON: Twenty-three years.
24 THE COURT: What do you do for a living?
25 PROSPECTIVE JUROR LAYTON: Warehouseman for Nevada

1 Beverage Company.
2 THE COURT: Are you married?
3 PROSPECTIVE JUROR LAYTON: Yes.
4 THE COURT: What does your wife do, if she works?
5 PROSPECTIVE JUROR LAYTON: She's in retail sales.
6 THE COURT: Do you have any children?
7 PROSPECTIVE JUROR LAYTON: Yes.
8 THE COURT: Too young to work or --
9 PROSPECTIVE JUROR LAYTON: Yes.
10 THE COURT: Have you ever been in the military?
11 PROSPECTIVE JUROR LAYTON: Yes.
12 THE COURT: What branch?
13 PROSPECTIVE JUROR LAYTON: United States Marine
14 Corp.
15 THE COURT: How long?
16 PROSPECTIVE JUROR LAYTON: Three years.
17 THE COURT: Did you have anything to do with
18 military police or court martialing, did you?
19 PROSPECTIVE JUROR LAYTON: No.
20 THE COURT: You ever been a victim of a crime?
21 PROSPECTIVE JUROR LAYTON: Yes.
22 THE COURT: What?
23 PROSPECTIVE JUROR LAYTON: A car vandalism.
24 THE COURT: Did they catch the individual?
25 PROSPECTIVE JUROR LAYTON: No.

1 THE COURT: That's not going to affect your
2 deliberation?
3 PROSPECTIVE JUROR LAYTON: No.
4 THE COURT: Have you or anyone closely associated
5 ever been arrested for a crime?
6 PROSPECTIVE JUROR LAYTON: Yes.
7 THE COURT: Who was that?
8 PROSPECTIVE JUROR LAYTON: My mother.
9 THE COURT: What was she arrested for?
10 PROSPECTIVE JUROR LAYTON: Felony embezzlement?
11 THE COURT: How long ago was it?
12 PROSPECTIVE JUROR LAYTON: About ten years ago, I
13 think.
14 THE COURT: It was probably in front of me, right?
15 PROSPECTIVE JUROR LAYTON: It might have been, I
16 don't know.
17 THE COURT: No, I don't know. What were the results
18 of that case?
19 PROSPECTIVE JUROR LAYTON: It was reduced to a
20 misdemeanor.
21 THE COURT: Oh. The fact that your mother had that
22 very unpleasant experience, and I don't want to make fun of
23 it, I just -- a little humor can't hurt once in a while, when
24 we get tired. That's not going to affect your deliberation in
25 this case, is it?

1 PROSPECTIVE JUROR LAYTON: No.
2 THE COURT: You don't hold that against the State of
3 Nevada because they had a -- somebody was prosecuting your
4 mother -- your mother was prosecuted, do you?
5 PROSPECTIVE JUROR LAYTON: No.
6 THE COURT: All right. Have you ever served on a
7 jury before?
8 PROSPECTIVE JUROR LAYTON: No.
9 THE COURT: Is there any reason then you couldn't be
10 a fair and impartial juror in this case?
11 PROSPECTIVE JUROR LAYTON: No.
12 THE COURT: Thank you very much, sir. Questions,
13 pass for cause?
14 MR. ROGER: Pass for cause.
15 THE COURT: Questions, pass for cause?
16 MS. McMAHON: Pass for cause, Your Honor.
17 THE COURT: State's third peremptory challenge.
18 MR. ROGER: We'll waive our third peremptory
19 challenge, Judge.
20 THE COURT: You waive it? Thank you. The defense
21 third peremptory challenge?
22 MR. LaPORTA: Your Honor, the defense thanks and
23 excuses -- the defense thanks and excuses juror with badge
24 number 315, Ms. Desiderio.
25 THE COURT: All right. Thank you. Please report

1 back to room 1013.
2 Clerk call another prospective juror.
3 THE CLERK: Maryann Rees, number 337.
4 THE COURT: Maryann Rees. Take that same seat up
5 there, Ms. Rees, all right?
6 PROSPECTIVE JUROR REES: Mm-hmm.
7 THE COURT: Is that yes?
8 PROSPECTIVE JUROR REES: Yes.
9 THE COURT: All right. We don't want any uh-huh
10 now. We've been getting away from that.
11 Ms. Rees, this case as I -- as we all indicated, we
12 all know by now, might be involved in two phases. First a
13 trial phase, and if the jury finds the defendant not guilty or
14 lesser included, so be it, that's the end of the case. If the
15 jury finds the defendant of -- guilty of first degree murder,
16 we go into the second phase. You understand that?
17 PROSPECTIVE JUROR REES: Yes.
18 THE COURT: And at the second phase, which I call
19 the penalty phase, the jury determines the punishment. Either
20 life with the possibility of parole, life without the
21 possibility of parole, or the imposition of the death penalty.
22 Do you understand that?
23 PROSPECTIVE JUROR REES: Yes.
24 THE COURT: Would you equally consider all those
25 options?

1 PROSPECTIVE JUROR REES: I would have a problem with
2 life with the possibility of parole, based on the severity of
3 the crime. I would feel that if he were to be paroled in the
4 future and go out and kill someone else I would feel very
5 responsible for that decision.

6 THE COURT: Well, certainly any decision a jury
7 makes is a very -- it -- take it -- can't take it lightly,
8 it's -- you have to take your responsibility, but all I'm
9 asking would you equally consider those and then make the
10 determination based upon the facts as you see it?

11 PROSPECTIVE JUROR REES: I don't know if I could
12 equally consider that possibility.

13 THE COURT: All right.

14 MR. SCHWARTZ: Ma'am, you understand -- you know --
15 unless you've read about it in the newspaper you know very
16 little about the case, the facts and circumstances and
17 probably nothing about the defendant's criminal background, is
18 that correct?

19 PROSPECTIVE JUROR REES: That's correct.

20 MR. SCHWARTZ: Okay. What we're looking for today
21 are twelve fair and impartial jurors, people who will base
22 their verdict solely upon what comes into this courtroom by
23 evidence. Okay? And what we're asking you to do is keep an
24 open mind and consider all three options, if it gets to that
25 stage, before making a decision. Could you consider all three

1 options and then make an informed decision based upon what you
2 feel is correct?

3 PROSPECTIVE JUROR REES: I don't think I could do
4 life with the possibility of parole.

5 MR. SCHWARTZ: Okay. Thank you.

6 MR. LaPORTA: Yeah. Challenge for cause, Your
7 Honor.

8 THE COURT: All right. Please report back to Room
9 1013.

10 The clerk, call another prospective juror.

11 THE CLERK: Vincent Benoit, number 338.

12 THE COURT: Vincent Benoit. Take that same seat up
13 there, Mr. Benoit. All right. How long you been in Las
14 Vegas?

15 PROSPECTIVE JUROR BENOIT: About thirty years.

16 THE COURT: All right. And again, this type of a
17 case might go into two phases, the trial phase, if you find --
18 if the jury finds the defendant guilty of first degree murder
19 and then we go into the penalty phase and you have three
20 options, the jury, life with the possibility of parole, life
21 without the possibility of parole and imposition of death
22 penalty. You understand that?

23 PROSPECTIVE JUROR BENOIT: I do.

24 THE COURT: Would you equally consider all those
25 options and make a determination based upon the evidence as

1 you see it and understand it?

2 PROSPECTIVE JUROR BENOIT: Yes, I would.

3 THE COURT: And what do you do for a living?

4 PROSPECTIVE JUROR BENOIT: I work as a maintenance
5 engineer for a local cellular communications company.

6 THE COURT: Are you married?

7 PROSPECTIVE JUROR BENOIT: No.

8 THE COURT: Children?

9 PROSPECTIVE JUROR BENOIT: No.

10 THE COURT: Have you ever been in the military?

11 PROSPECTIVE JUROR BENOIT: Yes, I was in the Army
12 for six years.

13 THE COURT: What branch?

14 PROSPECTIVE JUROR BENOIT: U.S. Army.

15 THE COURT: How long? Six years?

16 PROSPECTIVE JUROR BENOIT: Six years.

17 THE COURT: What years were they?

18 PROSPECTIVE JUROR BENOIT: That was 1985 through
19 1991.

20 THE COURT: All right. And then what was your rank?

21 PROSPECTIVE JUROR BENOIT: I was an E-5, a Sergeant.

22 THE COURT: You had nothing to do with the military
23 police or court martial, did you?

24 PROSPECTIVE JUROR BENOIT: No.

25 THE COURT: Are you acquainted with anybody in law

1 enforcement?
2 PROSPECTIVE JUROR BENOIT: Yes, as a matter of fact.
3 THE COURT: Who's that?
4 PROSPECTIVE JUROR BENOIT: In my job we do have
5 occasion to respond to court orders to provide wire tap
6 services for Metro and/or the FBI.
7 THE COURT: All right. So you -- in your job
8 related --
9 PROSPECTIVE JUROR BENOIT: Right.
10 THE COURT: -- you consult with people like that.
11 The fact that you have a job that you come in contact with law
12 enforcement people, that's not going to affect your
13 deliberation in this case?
14 PROSPECTIVE JUROR BENOIT: No, it will not.
15 THE COURT: And you're not going to give greater
16 weight or lesser weight to a police officer simply because
17 they're a police officer, are you?
18 PROSPECTIVE JUROR BENOIT: No, I will not.
19 THE COURT: You ever been a victim of a crime?
20 PROSPECTIVE JUROR BENOIT: Yes, I have.
21 THE COURT: What was that?
22 PROSPECTIVE JUROR BENOIT: I was assaulted and also
23 have had a couple of burglaries over the years.
24 THE COURT: About the assault, did somebody just hit
25 you or?

1 PROSPECTIVE JUROR BENOIT: Well, it was somebody
2 that was having an affair with my wife at the time and it got
3 ugly.
4 THE COURT: All right. Were you -- did you have to
5 appear in court on that?
6 PROSPECTIVE JUROR BENOIT: Yes, and he failed to
7 appear and of course a bench warrant was issued and he
8 disappeared.
9 THE COURT: All right. And those two burglaries,
10 were they cars, houses?
11 PROSPECTIVE JUROR BENOIT: It was one at my house
12 that I now live in and another one in an apartment that I used
13 to live in before that.
14 THE COURT: Did they ever catch the individuals?
15 PROSPECTIVE JUROR BENOIT: No.
16 THE COURT: The fact that you've had those three
17 unpleasant experiences, that's not going to affect your
18 deliberation in this case, is it?
19 PROSPECTIVE JUROR BENOIT: No, it will not.
20 THE COURT: You don't hold that against the State of
21 Nevada for any reason?
22 PROSPECTIVE JUROR BENOIT: No.
23 THE COURT: All right. Ever -- you or anyone
24 closely associated with you ever been arrested for a crime?
25 PROSPECTIVE JUROR BENOIT: Yes.

1 THE COURT: Who's that?
2 PROSPECTIVE JUROR BENOIT: My wife, when I was
3 married to her, was arrested back in Maryland for hindering
4 and obstructing a police officer. She was drunk.
5 THE COURT: And what were the results of that?
6 PROSPECTIVE JUROR BENOIT: It was dismissed.
7 THE COURT: All right. That's not going to affect
8 your deliberation?
9 PROSPECTIVE JUROR BENOIT: No.
10 THE COURT: You ever serve on a jury before?
11 PROSPECTIVE JUROR BENOIT: No.
12 THE COURT: Any reason you couldn't be fair and
13 impartial in this case?
14 PROSPECTIVE JUROR BENOIT: No reason.
15 THE COURT: Thank you very much.
16 Questions? Pass for cause?
17 MR. ROGER: Yes, Judge.
18 Is it Mr. Benoit?
19 PROSPECTIVE JUROR BENOIT: Benoit, yes.
20 MR. ROGER: Mr. Benoit, on these occasions when you
21 have been a victim was that here in Clark County?
22 PROSPECTIVE JUROR BENOIT: No -- well, the last
23 occasion was -- actually the last two. There was a burglary
24 at my apartment while I lived here and then at my house last
25 year.

1 MR. ROGER: Both burglaries?
2 PROSPECTIVE JUROR BENOIT: Yeah, those were both
3 burglaries.
4 MR. ROGER: Okay. Did they ever catch the
5 individual?
6 PROSPECTIVE JUROR BENOIT: No. There was, you know,
7 there were fingerprints and so on, but nobody was ever caught.
8 MR. ROGER: Okay. Did the Metropolitan Police
9 Department investigate those crimes?
10 PROSPECTIVE JUROR BENOIT: Yes.
11 MR. ROGER: Recognizing that it's often difficult to
12 solve these burglaries if you don't have a suspect, were you
13 satisfied or dissatisfied with the way they handled the
14 investigation?
15 PROSPECTIVE JUROR BENOIT: I would have to say that
16 I was satisfied with the thoroughness of the investigation
17 that was done, yes.
18 MR. ROGER: Thank you. Do you believe you can be
19 fair and impartial?
20 PROSPECTIVE JUROR BENOIT: Yes, I do.
21 MR. ROGER: If the circumstances were appropriate,
22 could you personally vote for the death penalty?
23 PROSPECTIVE JUROR BENOIT: Yes, I could.
24 MR. ROGER: Thank you.
25 Pass for cause.

1 THE COURT: Questions? Pass for cause?
2 MS. McMAHON: Please, Your Honor. Thank you.
3 Good afternoon, Mr. Benoit.
4 PROSPECTIVE JUROR BENOIT: Good afternoon.
5 MS. McMAHON: On the questionnaire, question number
6 38 asked, "What types of opinions do you have that could
7 affect your judgment in a criminal law trial?" And your
8 response was, "I support the death penalty." Because you
9 support and believe in the death penalty do you -- do you feel
10 that that would have any impact in your fairly considering all
11 alternatives of punishment?
12 PROSPECTIVE JUROR BENOIT: No, it would not impact
13 my fairly considering all the different alternatives.
14 MS. McMAHON: Thank you.
15 (Pause in the proceedings)
16 MS. McMAHON: That's all. Thank you.
17 THE COURT: Pass for cause?
18 MS. McMAHON: Pass for cause, Your Honor.
19 THE COURT: Don't converse among yourselves or
20 anyone else on any subject connected with the trial, read,
21 watch or listen to any report or commentary on the trial, or
22 form or express any opinion on the trial until the Court has
23 finally submitted it to you.
24 If the attorneys -- you might see the attorneys
25 outside in the hallway, ladies and gentlemen, don't -- they

1 don't want to engage you in any chit-chat, because they don't
2 want to be accused of currying favor with the jury, so please
3 don't take that as an affront that they don't want to you;
4 they're all professional lawyers and they don't want to be
5 accused of currying favor.

6 With that understanding we'll take a ten minute
7 recess.

8 (The Court recessed until 2:15 p.m.)

9 (Prospective Jurors Present)

10 THE COURT: --- its fourth peremptory challenge if
11 it sees fit.

12 MR. ROGER: We'll thank and excuse Juror Number 310,
13 Cindy Miller.

14 THE COURT: All right. Please report back to Room
15 1013.

16 The clerk, call another prospective juror.

17 THE CLERK: Michael Boeckle.

18 THE COURT: Michael.

19 THE CLERK: Number 339.

20 THE COURT: All right. Mr. Boeckle, again these
21 questions related to your qualifications. I know they're
22 tedious and I don't like hearing them, but they're very, very
23 important both to the State of Nevada and to the defense, of
24 course.

25 This trial might be like a two phase aspect, that

1 the first phase would be the trial and -- the trial phase and
2 if the jury finds the defendant guilty of first degree murder,
3 then the penalty case kicks in. Of course, if the jury finds
4 the defendant not guilty or guilty of a lesser included we
5 don't have any penalty phase. But just in case we do we have
6 to ask these questions. So the State of Nevada -- laws of the
7 State of Nevada provide that the jury sets the punishment and
8 the possible punishments that these -- the law indicates is
9 life with the possibility of parole, life without the
10 possibility of parole or the imposition of the death penalty.
11 Do you understand that?

12 PROSPECTIVE JUROR BOECKLE: Yes, sir.

13 THE COURT: Would you be able to equally consider
14 each of those punishments?

15 PROSPECTIVE JUROR BOECKLE: Yes, sir, I would.

16 THE COURT: How long you been in Las Vegas?

17 PROSPECTIVE JUROR BOECKLE: On and off, eight years.

18 THE COURT: What do you do for a living?

19 PROSPECTIVE JUROR BOECKLE: I'm a resource analyst.

20 THE COURT: Are you married?

21 PROSPECTIVE JUROR BOECKLE: Yes.

22 THE COURT: What does your wife do?

23 PROSPECTIVE JUROR BOECKLE: She works at Bally's,
24 she's a change person.

25 THE COURT: Children?

1 PROSPECTIVE JUROR BOECKLE: Two. One married and in
2 Michigan, the other one a student.
3 THE COURT: You ever been in the military?
4 PROSPECTIVE JUROR BOECKLE: Twenty-four years.
5 THE COURT: Twenty-four. What'd you do? What
6 branch?
7 PROSPECTIVE JUROR BOECKLE: Air Force.
8 THE COURT: And when did you get out?
9 PROSPECTIVE JUROR BOECKLE: Six months ago.
10 THE COURT: What was your rank?
11 PROSPECTIVE JUROR BOECKLE: E-7.
12 THE COURT: Anything to do with court martialing or
13 military police?
14 PROSPECTIVE JUROR BOECKLE: No.
15 THE COURT: Okay. What did you do there mostly?
16 PROSPECTIVE JUROR BOECKLE: Financial analyst.
17 THE COURT: You ever been a victim of a crime?
18 PROSPECTIVE JUROR BOECKLE: Yes.
19 THE COURT: What was that?
20 PROSPECTIVE JUROR BOECKLE: Home break in.
21 THE COURT: Did they catch the individual?
22 PROSPECTIVE JUROR BOECKLE: No.
23 THE COURT: Never had to appear in court?
24 PROSPECTIVE JUROR BOECKLE: No.
25 THE COURT: That's -- it's not going to affect your

1 deliberation in this case?

2 PROSPECTIVE JUROR BOECKLE: No.

3 THE COURT: You or anyone closely associated with
4 you ever been arrested for a crime?

5 PROSPECTIVE JUROR BOECKLE: No.

6 THE COURT: You ever serve on a jury before?

7 PROSPECTIVE JUROR BOECKLE: No.

8 THE COURT: You understand that Mr. Thomas sits here
9 with the presumption of innocence, that he's presumed to be
10 innocent until the proven -- until the -- it's -- the State
11 proves him guilty beyond a reasonable doubt. You understand
12 that?

13 PROSPECTIVE JUROR BOECKLE: Yes, I do.

14 THE COURT: And he's here by what we call an
15 information, if you're picked as a juror that information will
16 be read to you, but it's a mere charging document and it's not
17 evidence. Do you understand that?

18 PROSPECTIVE JUROR BOECKLE: Yes.

19 THE COURT: And at the conclusion of this case I'm
20 going to instruct you as what the law is on this particular
21 case. Would you promise me you'll follow my instructions?

22 PROSPECTIVE JUROR BOECKLE: I will.

23 THE COURT: Is there any reason you couldn't be a
24 fair and impartial juror in this case then?

25 PROSPECTIVE JUROR BOECKLE: No.

1 THE COURT: Thank you very much, sir.
2 Questions? Pass for cause?
3 MR. SCHWARTZ: Pass for cause, Your Honor.
4 THE COURT: Questions? Pass for cause?
5 MR. LaPORTA: No, Your Honor, I have a few questions
6 of -- Mr. Boeckle is it?
7 PROSPECTIVE JUROR BOECKLE: Boeckle.
8 MR. LaPORTA: Boeckle. I see where your place of
9 birth was in England --
10 PROSPECTIVE JUROR BOECKLE: That's correct.
11 MR. LaPORTA: -- is that correct? How long have you
12 lived in America? I mean has it been --
13 PROSPECTIVE JUROR BOECKLE: Thirty years.
14 MR. LaPORTA: Thirty years, so, and you're an
15 American citizen I am going to assume.
16 PROSPECTIVE JUROR BOECKLE: I am.
17 MR. LaPORTA: All right. All right. Now, getting
18 into the attitudes towards death penalties, there was a
19 question in here you answered, when it came to life without
20 the possibility of parole, one of your -- I asked you what
21 your general thoughts about it were. No benefit, too costly.
22 PROSPECTIVE JUROR BOECKLE: Yes.
23 MR. LaPORTA: Still your feelings right now?
24 PROSPECTIVE JUROR BOECKLE: I'd say that, yes.
25 MR. LaPORTA: All right. So, you couldn't consider

1 all three.

2 PROSPECTIVE JUROR BOECKLE: I could, sir, based on
3 the evidence. This was definitely an eye opening experience
4 here listening to some of things. I'm not a lawyer, so I
5 don't know what the law is --

6 MR. LaPORTA: Okay.

7 PROSPECTIVE JUROR BOECKLE: -- but I will give -- I
8 will be -- I'll judge on the guidance that's given to me and
9 the evidence presented.

10 MR. LaPORTA: All right. So, in other words, you
11 can set your personal feelings aside in this case as to --

12 PROSPECTIVE JUROR BOECKLE: I think I can be
13 impartial.

14 MR. LaPORTA: All right. Do you think or do you
15 know? It's very important to both sides.

16 PROSPECTIVE JUROR BOECKLE: I will be -- I can be
17 impartial.

18 MR. LaPORTA: Okay. You can be.

19 I have no further questions, Your Honor, pass for
20 cause.

21 THE COURT: Pass for cause?

22 MR. LaPORTA: Pass for cause.

23 THE COURT: The defense fourth peremptory challenge.

24 MS. McMAHON: Court's indulgence, Your Honor.

25 MR. LaPORTA: The juror thanks -- defense thanks and

1 excuses Juror Number 322, Mr. Cortez.
2 THE COURT: All right. Sir, report back to Room
3 1013.
4 The clerk, another prospective juror.
5 THE CLERK: Marilyn Worob.
6 THE COURT: Is Marilyn here?
7
8 PROSPECTIVE JUROR WOROB: Yes.
9 THE COURT: All right. Take that same seat,
10 Marilyn. How long you been in Las Vegas?
11 PROSPECTIVE JUROR WOROB: Eleven months.
12 THE COURT: All right. And now, again, we're here
13 to pick a jury, as you well know after being here all morning
14 and a couple hours in the afternoon and we pick a jury by
15 asking a lot of questions, and part of the questioning is this
16 particular case could go into two phases, you understand that.
17 The trial phase, if the jury finds the defendant not guilty or
18 guilty of a lesser included, or something, then we don't go
19 into the penalty phase, but only if the jury finds the
20 defendant guilty of first degree murder do we go into the
21 penalty phase. You understand that?
22 PROSPECTIVE JUROR WOROB: Yes.
23 THE COURT: In Nevada our laws say that the jury has
24 to impose punishment. You understand that?
25 PROSPECTIVE JUROR WOROB: Yes.

1 THE COURT: And the possible punishments are, life
2 with the possibility of parole, life without the possibility
3 of parole and the imposition of the death penalty. You
4 understand that?
5 PROSPECTIVE JUROR WOROB: I do.
6 THE COURT: Could you -- would you -- would you
7 equally consider all those options in reaching a verdict?
8 PROSPECTIVE JUROR WOROB: No, I wouldn't.
9 THE COURT: Why not?
10 PROSPECTIVE JUROR WOROB: I don't believe in the
11 death penalty.
12 THE COURT: Is this a religious thing, are you
13 Catholic like the other one, is that --
14 PROSPECTIVE JUROR WOROB: I am Catholic, I just
15 don't think I have the right to say someone should die.
16 THE COURT: Where did you learn this from?
17 PROSPECTIVE JUROR WOROB: It's just kind of the way
18 I am. I just, you know, I don't believe I have the power to
19 say someone should die.
20 MR. ROGER: Challenge for cause.
21 MR. LaPORTA: No objection.
22 THE COURT: All right. Report back to Room 1013.
23 The clerk, call another prospective juror.
24 THE CLERK: Clara Hoover, Number 343.
25 THE COURT: Clara Hoover. Take that same seat, Ms.

1 Hoover.

2 PROSPECTIVE JUROR HOOVER: Thank you.

3 THE COURT: Again, Ms. Hoover, this case could

4 involve two phases. The first phase would be the trial phase.

5 If the jury finds the defendant guilty of first degree murder,

6 then a penalty phase is kicked in and the jury is the one that

7 determines punishment here in Nevada and Nevada provides for

8 three possible punishments, life with the possibility of

9 parole, life without the possibility of parole and the

10 imposition of the death penalty. You understand that?

11 PROSPECTIVE JUROR HOOVER: Yes, I understand.

12 THE COURT: Would you equally consider all those

13 options?

14 PROSPECTIVE JUROR HOOVER: No, I don't consider life

15 with the possibility of parole. I just don't agree with that.

16 THE COURT: Well, you might not agree, but the law

17 provides this, don't you understand? Aren't we a nation of

18 laws?

19 PROSPECTIVE JUROR HOOVER: Yes.

20 THE COURT: And we have certain laws and it provides

21 that every case is different, every facts are different --

22 PROSPECTIVE JUROR HOOVER: Yes.

23 THE COURT: -- and the law provide -- they're not

24 saying -- telling you what to do --

25 PROSPECTIVE JUROR HOOVER: No.

1 THE COURT: -- they're just saying you can consider
2 these options.
3 PROSPECTIVE JUROR HOOVER: I don't think I can
4 consider that, really.
5 THE COURT: Is it a religious thing?
6 PROSPECTIVE JUROR HOOVER: No, it's my belief.
7 THE COURT: Where did you get this belief?
8 PROSPECTIVE JUROR HOOVER: From listening to a lot
9 of --
10 THE COURT: Television?
11 PROSPECTIVE JUROR HOOVER: Not television, of real
12 things and --
13 THE COURT: Any motions here?
14 MS. McMAHON: Yes, Your Honor, we'd challenge for
15 cause.
16 MR. LaPORTA: Yes, challenge for cause.
17 THE COURT: All right. Report back to Room 1013.
18 The clerk, call another prospective juror.
19 THE CLERK: Frankie Sheppard, number 344.
20 (Off record colloquy)
21 THE COURT: You're Frankie Sheppard, is it?
22 PROSPECTIVE JUROR SHEPPARD: Yes.
23 THE COURT: This case could go possibly into two
24 phases, Ms. Sheppard. One would be the trial phase and if the
25 jury finds the defendant guilty of first degree murder then

1 the penalty phase kicks in and the jury has a right to have
2 options of life with the possibility of parole, life without
3 the possibility of parole and imposition of the death penalty.
4 Do you understand that?
5 PROSPECTIVE JUROR SHEPPARD: Yes.
6 THE COURT: Would you equally consider any of those
7 options -- each of those options?
8 PROSPECTIVE JUROR SHEPPARD: I have a little hard
9 time with the death penalty.
10 THE COURT: Why is that?
11 PROSPECTIVE JUROR SHEPPARD: I just don't want to
12 see -- be responsible of anyone's death.
13 THE COURT: Okay. Any questions?
14 MR. SCHWARTZ: Challenge for cause.
15 MR. LaPORTA: No objection, Your Honor.
16 THE COURT: All right. Report back to Room 1013.
17 The clerk, call another prospective juror.
18 THE CLERK: Sandra Lane, Number 345.
19 THE COURT: Take that same seat, Ms. Lane. Again,
20 those three options, life with the possibility of parole, life
21 without the possibility of parole, imposition of death
22 penalty, would you equally consider those?
23 PROSPECTIVE JUROR LANE: Yes, sir, I would.
24 THE COURT: How long you been in Las Vegas?
25 PROSPECTIVE JUROR LANE: Forty-seven years.

1 THE COURT: And what do you do for a living?
2 PROSPECTIVE JUROR LANE: I work for Clark County
3 Public Works. I run the map room.
4 THE COURT: Are you married?
5 PROSPECTIVE JUROR LANE: Yes, sir, I am.
6 THE COURT: Does your husband work?
7 PROSPECTIVE JUROR LANE: My husband is a mechanic
8 for Cables Underground and I have two children, one in the
9 military, presently at Fort Bragg and the other one here is a
10 carpenter.
11 THE COURT: Okay. You ever been in the military?
12 PROSPECTIVE JUROR LANE: I have not, no.
13 THE COURT: Are you acquainted with anybody in law
14 enforcement?
15 PROSPECTIVE JUROR LANE: My cousin was married to
16 the Chief of Police of North Las Vegas, he retired about
17 twelve years ago.
18 THE COURT: That's not going to affect your
19 deliberation?
20 PROSPECTIVE JUROR LANE: No, sir.
21 THE COURT: You're not going to give greater weight
22 or lesser weight to a police officer simply because they're a
23 police officer, are you?
24 PROSPECTIVE JUROR LANE: No, sir.
25 THE COURT: You ever been the victim of a crime?

1 PROSPECTIVE JUROR LANE: Many years ago I had
2 someone in my house that tried to attack me.
3 THE COURT: Did they catch the individual?
4 PROSPECTIVE JUROR LANE: No, sir.
5 THE COURT: And that's not going to affect your
6 deliberation?
7 PROSPECTIVE JUROR LANE: No, sir, that was over
8 twenty years ago.
9 THE COURT: Yeah. And you or anyone closely
10 associated with you ever been arrested for a crime?
11 PROSPECTIVE JUROR LANE: I was arrested about twenty
12 years ago for slapping a lady who was pulling my hair.
13 THE COURT: And they arrested you?
14 PROSPECTIVE JUROR LANE: Yes, sir.
15 THE COURT: What were the results of that, ma'am?
16 PROSPECTIVE JUROR LANE: It was dismissed where I
17 went to school --
18 THE COURT: Okay.
19 PROSPECTIVE JUROR LANE: -- to learn to control my
20 temper.
21 THE COURT: All right. And that's not going to
22 affect your deliberation?
23 PROSPECTIVE JUROR LANE: No, sir, that's also been
24 twenty years ago.
25 THE COURT: You ever serve on a jury before?

1 PROSPECTIVE JUROR LANE: Yes, sir, three times.
2 THE COURT: All right. The first time, criminal or
3 civil?
4 PROSPECTIVE JUROR LANE: The first time was a --
5 THE COURT: Just answer my question, criminal or
6 civil?
7 PROSPECTIVE JUROR LANE: It was federal.
8 THE COURT: Criminal or civil?
9 PROSPECTIVE JUROR LANE: Criminal.
10 THE COURT: What was the charge?
11 PROSPECTIVE JUROR LANE: Crossing the picket line --
12 or crossing the line at the Test Site.
13 THE COURT: All right. Did you serve as a juror?
14 PROSPECTIVE JUROR LANE: Yes, sir.
15 THE COURT: Did you deliberate the case?
16 PROSPECTIVE JUROR LANE: Yes, sir.
17 THE COURT: Were you picked as foreperson?
18 PROSPECTIVE JUROR LANE: No, sir.
19 THE COURT: Without telling me what the verdict, did
20 the jury reach a verdict?
21 PROSPECTIVE JUROR LANE: Yes, sir, we did.
22 THE COURT: The second time, criminal or civil?
23 PROSPECTIVE JUROR LANE: It was a civil case.
24 THE COURT: All right. You were picked as a juror?
25 PROSPECTIVE JUROR LANE: Yes, sir.

1 THE COURT: You deliberated the case?
2 PROSPECTIVE JUROR LANE: Yes.
3 THE COURT: Were you picked as foreperson?
4 PROSPECTIVE JUROR LANE: No, sir.
5 THE COURT: Without telling me what the verdict was,
6 did the jury reach a verdict?
7 PROSPECTIVE JUROR LANE: No, sir, they -- the
8 defendant settled out of court.
9 THE COURT: Okay. So you really didn't deliberate
10 the case.
11 PROSPECTIVE JUROR LANE: Not that one, sir.
12 THE COURT: All right. And the third charge,
13 criminal or civil?
14 PROSPECTIVE JUROR LANE: Criminal.
15 THE COURT: What was the charge?
16 PROSPECTIVE JUROR LANE: The gentleman was exposing
17 himself to little children.
18 THE COURT: All right. Were you picked as a juror?
19 PROSPECTIVE JUROR LANE: Yes, sir.
20 THE COURT: Were you picked as foreperson?
21 PROSPECTIVE JUROR LANE: No, sir.
22 THE COURT: Did you deliberate the case?
23 PROSPECTIVE JUROR LANE: Yes, sir.
24 THE COURT: Without telling me what the verdict was,
25 did the jury reach a verdict?

1 PROSPECTIVE JUROR LANE: Yes, sir, we did.
2 THE COURT: All right. Any reason you couldn't be a
3 fair and impartial juror in this case, ma'am.
4 PROSPECTIVE JUROR LANE: No, sir.
5 THE COURT: Thank you so much.
6 Questions? Pass for cause?
7 MR. SCHWARTZ: Just briefly, Your Honor.
8 Good afternoon, ma'am.
9 PROSPECTIVE JUROR LANE: Good afternoon.
10 MR. SCHWARTZ: When you filled out the questionnaire
11 and you were asked on question 85, did you say that you were
12 generally, and that gives you three choices, in favor of the
13 death penalty, generally opposed to it or never thought about
14 it. You circled, never thought about it and then you wrote in
15 next to that, I have thought about it, but I haven't made up
16 my mind.
17 PROSPECTIVE JUROR LANE: I've never really been, you
18 know, never been put in the position where I had to make that
19 kind of decision, but I do feel that I am able to make that
20 decision.
21 MR. SCHWARTZ: So if the State brought forth
22 sufficient evidence wherein you returned a verdict of first
23 degree murder, and then you were to deliberate at the penalty
24 phase and you felt after hearing all the evidence at the
25 penalty phase, both on behalf of the State and the defense,

1 you felt the only appropriate punishment for the deaths of
2 these two young men was one of death, you could sentence this
3 defendant to death?

4 PROSPECTIVE JUROR LANE: Yes, sir.

5 MR. SCHWARTZ: Thank you. Pass for cause, Your
6 Honor.

7 THE COURT: Questions? Pass for cause?

8 MR. LaPORTA: No, Your Honor, I have a few questions
9 here.

10 Ma'am, on question number 98 you -- the question
11 was, "Do you feel that life in prison without the possibility
12 of parole is a severe punishment." You answered, "No." And
13 in the explanation area you went on to say, "Depending on
14 crime committed they should pay for taking the other's life."
15 Now, putting those two together, do you consider life without
16 the possibility of parole and may I say that's exactly what it
17 means, absolutely no parole, ever.

18 PROSPECTIVE JUROR LANE: I -- I understand that.

19 MR. LaPORTA: Do you consider that a harsh
20 punishment?

21 PROSPECTIVE JUROR LANE: I consider that a very
22 harsh punishment. I have to admit that while we were filling
23 out the questionnaires we were told we could go home when they
24 were done and I was in a hurry.

25 MR. LaPORTA: Okay. You don't consider, if you

1 heard all the evidence, aggravating or mitigating, during the
2 penalty phase, do you think that by giving 'em life without
3 the possibility of parole somehow, you know, you're giving a
4 break of some sort.

5 PROSPECTIVE JUROR LANE: No, sir.

6 MR. LaPORTA: I mean you are -- do you understand
7 that you are meting out a harsh form of punishment.

8 PROSPECTIVE JUROR LANE: I understand that's a very
9 harsh punishment, all of -- all three of them are.

10 MR. LaPORTA: All right. And you can consider all
11 three equally?

12 PROSPECTIVE JUROR LANE: I believe so.

13 MR. LaPORTA: All right. Pass this -- all right.
14 No further questions, pass for cause, Your Honor.

15 THE COURT: All right. The State's next peremptory
16 challenge.

17 MR. ROGER: We'll be waiving our next peremptory
18 challenge, Judge.

19 THE COURT: Thank you.
20 The defense next peremptory challenge.

21 MR. LaPORTA: The defense thanks and excuses Badge
22 Number 339, Mr. Boeckle I believe that is.

23 PROSPECTIVE JUROR BOECKLE: Boeckle.

24 MR. LaPORTA: Boeckle.

25 THE COURT: All right. Please report back to Room

1 1013.
2 The clerk, call another prospective juror.
3 THE CLERK: Badge Number 346, Charles Jasper --
4 Gasper.
5 THE COURT: Is it Gasper?
6 PROSPECTIVE JUROR CASPER: Casper.
7 THE COURT: Casper.
8 PROSPECTIVE JUROR CASPER: C.
9 THE COURT: How long you been in Las Vegas, sir?
10 PROSPECTIVE JUROR CASPER: Two years.
11 THE COURT: Again, sir, you know, your
12 qualifications as a juror we ask these questions of everybody
13 and they're very serious questions. And this could be a
14 possible two phase trial. The first is the trial phase, if
15 the jury finds the defendant guilty of first degree murder,
16 then the penalty phase kicks in and it's incumbent upon the
17 jury to provide the punishment. You understand that, the
18 punishment?
19 PROSPECTIVE JUROR CASPER: Yes, sir.
20 THE COURT: And the possibilities that the law
21 provides are, life with the possibility of parole, life
22 without the possibility of parole and the imposition of the
23 death penalty, you understand that?
24 PROSPECTIVE JUROR CASPER: Yes, sir.
25 THE COURT: Would you be able to equally consider

1 each of those options and make a --
2 PROSPECTIVE JUROR CASPER: No, sir. No, sir, I
3 would be against the death penalty.
4 THE COURT: Why is that?
5 PROSPECTIVE JUROR CASPER: Because I just don't feel
6 it's right to take another person's life.
7 THE COURT: Is that religion?
8 PROSPECTIVE JUROR CASPER: It's just the way I've
9 been brought up.
10 MR. ROGER: Challenge for cause.
11 MR. LaPORTA: No objection, Your Honor.
12 THE COURT: All right. Report back to Room 1013.
13 The clerk, another prospective juror.
14 THE CLERK: Badge Number 347, Sylvia Weber.
15 THE COURT: Take that same seat, Sylvia, there.
16 Again, this two phase aspect, Sylvia, if the jury finds the
17 defendant guilty of first degree murder then the options at
18 the penalty phase are life with the possibility of parole,
19 life without the possibility of parole and the imposition of
20 the death penalty. Could you equally consider all of these
21 options?
22 PROSPECTIVE JUROR WEBER: No.
23 THE COURT: Why is that?
24 PROSPECTIVE JUROR WEBER: I don't believe that a
25 person that has taken a life should deserve parole.

1 THE COURT: So every single case you'd give somebody
2 death.
3 PROSPECTIVE JUROR WEBER: On first degree.
4 THE COURT: No matter what the circumstances are --
5 PROSPECTIVE JUROR WEBER: Well, either that or --
6 THE COURT: -- no matter what the age, no matter
7 what the background or anything.
8 PROSPECTIVE JUROR WEBER: That's right, they should
9 be responsible for their behavior.
10 THE COURT: You'd put everybody to death?
11 PROSPECTIVE JUROR WEBER: Not everybody to death,
12 but either that or --
13 THE COURT: Well, that's what you just said, you
14 wouldn't consider the other option.
15 PROSPECTIVE JUROR WEBER: Well, either that --
16 either that or the life in -- life sentence.
17 THE COURT: Life sentence.
18 PROSPECTIVE JUROR WEBER: Yes.
19 THE COURT: So that's the options, life with, life
20 without or death.
21 PROSPECTIVE JUROR WEBER: Well, I said that I do not
22 agree that they should have parole, life with parole.
23 MR. LaPORTA: Challenge for cause, Your Honor.
24 MR. SCHWARTZ: No objection.
25 THE COURT: Report back to Room 1013.

1 Another prospective juror.
2 THE CLERK: Badge Number 348, Gladys Howard.
3 THE COURT: Oh, that was -- we've excused her
4 because she had some pulmonary problems.
5 THE CLERK: Badge Number 349, William Tiu.
6 THE COURT: William, take that same seat. Could you
7 consider all those three options, life with, life without and
8 the death.
9 PROSPECTIVE JUROR TIU: Yeah.
10 THE COURT: Okay. And how long you been in Las
11 Vegas?
12 PROSPECTIVE JUROR TIU: Twelve.
13 THE COURT: Twelve years?
14 PROSPECTIVE JUROR TIU: Uh-huh.
15 THE COURT: And what do you do for a living?
16 PROSPECTIVE JUROR TIU: Engineering.
17 THE COURT: What company, sir?
18 PROSPECTIVE JUROR TIU: Hospital.
19 THE COURT: Okay. Are you married?
20 PROSPECTIVE JUROR TIU: No, divorce.
21 THE COURT: Children?
22 PROSPECTIVE JUROR TIU: Two girls.
23 THE COURT: What do they do for a living?
24 PROSPECTIVE JUROR TIU: The older one is a secretary
25 and the younger one is the part-time carrier in pharmacy.

1 THE COURT: Okay. You ever been in the military?
2 PROSPECTIVE JUROR TIU: No.
3 THE COURT: Are you acquainted with anybody in law
4 enforcement?
5 PROSPECTIVE JUROR TIU: My next door neighbor.
6 THE COURT: What's his name? All you know is he's a
7 member of Metro?
8 PROSPECTIVE JUROR TIU: No, he work in Goldfield.
9 THE COURT: He worked in Goldfield?
10 PROSPECTIVE JUROR TIU: Yeah.
11 THE COURT: As an officer?
12 PROSPECTIVE JUROR TIU: Yeah.
13 THE COURT: All right. But you don't -- you
14 don't --
15 PROSPECTIVE JUROR TIU: Yeah, we talk a lot.
16 THE COURT: Talk a little. All right. The fact
17 that your neighbor works in Goldfield, that's not going to
18 affect your deliberation in this case, is it?
19 PROSPECTIVE JUROR TIU: I don't think so.
20 THE COURT: Again, you're not to give greater weight
21 or lesser weight to a police officer's testimony simply
22 because they're a police officer, you understand that?
23 PROSPECTIVE JUROR TIU: We never mention about any
24 trial.
25 THE COURT: Pardon? You never talked to your

1 neighbor, right.
2 PROSPECTIVE JUROR TIU: No.
3 THE COURT: But you know you're not to give greater
4 weight or lesser weight to a police officer's testimony,
5 simply because they're a police officer, you understand that?
6 PROSPECTIVE JUROR TIU: Yeah.
7 THE COURT: All right. Have you ever been a victim
8 of a crime?
9 PROSPECTIVE JUROR TIU: Victim, yes.
10 THE COURT: What was that?
11 PROSPECTIVE JUROR TIU: When I still own the
12 motel --
13 THE COURT: Pardon?
14 PROSPECTIVE JUROR TIU: When I still have the motel
15 I been beat up.
16 THE COURT: Okay. Did they ever catch the
17 individual?
18 PROSPECTIVE JUROR TIU: Yes.
19 THE COURT: Did you have to go to court?
20 PROSPECTIVE JUROR TIU: Yes.
21 THE COURT: All right. The fact that you had that
22 unpleasant experience, that's not going to affect your
23 deliberation --
24 PROSPECTIVE JUROR TIU: No.
25 THE COURT: -- in this case, is it? Have you or

1 anyone closely associated with you ever been arrested for a
2 crime?
3 PROSPECTIVE JUROR TIU: Me, no.
4 THE COURT: Did you ever serve on a jury before?
5 PROSPECTIVE JUROR TIU: No.
6 THE COURT: Any reason you couldn't be fair and
7 impartial?
8 PROSPECTIVE JUROR TIU: No, I don't think so.
9 THE COURT: Thank you very much, sir.
10 Questions? Pass for cause?
11 MR. SCHWARTZ: Thank you.
12 Good afternoon, sir. When you were given these --
13 this questionnaire to fill out, I noticed that you didn't
14 answer very many of the questions, is there a reason for that,
15 sir?
16 PROSPECTIVE JUROR TIU: Being lazy.
17 MR. SCHWARTZ: Being lazy. Okay. Do you know how
18 important it is to fill out the questionnaires?
19 PROSPECTIVE JUROR TIU: Yeah.
20 MR. SCHWARTZ: So that both sides can know something
21 about --
22 PROSPECTIVE JUROR TIU: Uh-huh.
23 MR. SCHWARTZ: -- the prospective jurors?
24 PROSPECTIVE JUROR TIU: Yeah.
25 MR. SCHWARTZ: Now, with regard to the death

1 penalty, what is your feeling toward the death penalty?
2 PROSPECTIVE JUROR TIU: And I'm a Catholic, I don't
3 believe in punishments like an eye for an eye.
4 MR. SCHWARTZ: Okay. So you don't believe in the
5 death penalty?
6 PROSPECTIVE JUROR TIU: People have to give some of
7 excuse [sic] of their background. Maybe they grow up as a bad
8 neighborhood or the parents are not teaching it right. People
9 may dos [sic] --
10 MR. SCHWARTZ: Okay. So if you were given a
11 questions, yes or no, do you believe in the death penalty, yes
12 or no? Could you ever vote for the death penalty, yes or no?
13 PROSPECTIVE JUROR TIU: If I have to vote, yes.
14 MR. SCHWARTZ: You could -- you could come into this
15 courtroom and sentence another individual to death?
16 PROSPECTIVE JUROR TIU: Not me. I can't do that.
17 MR. SCHWARTZ: Okay.
18 Your Honor, I would challenge for cause.
19 THE COURT: Well, you just told me, sir, when I --
20 in the beginning, that's why I do it in the beginning that you
21 could equally consider each of those options, life with, life
22 without and the imposition of the death penalty, you could
23 equally consider and --
24 PROSPECTIVE JUROR TIU: I can consider, but --
25 THE COURT: -- do what you want to do when you hear

1 the facts, could you do that, a yes or no?
2 PROSPECTIVE JUROR TIU: I could.
3 THE COURT: So --
4 PROSPECTIVE JUROR TIU: But for my -- for the
5 purpose of killing somebody.
6 THE COURT: For the what?
7 PROSPECTIVE JUROR TIU: I'm still consider death
8 penalty is not right.
9 THE COURT: Well, could you vote for the death
10 penalty under appropriate circumstances?
11 PROSPECTIVE JUROR TIU: No, I don't think so.
12 THE COURT: All right. Report back to Room 1013.
13 The clerk, call another prospective juror.
14 THE CLERK: Badge Number 350, Kevin Evans.
15 THE COURT: Mr. Evans, take that same seat, all
16 right. All right. Mr. Evans, if this case, if the jury finds
17 a defendant guilty of first degree murder, then this goes into
18 the penalty phase, you understand that?
19 PROSPECTIVE JUROR EVANS: Yeah.
20 THE COURT: Could you equally consider each of the
21 options, life with the possibility, life without the
22 possibility of parole --
23 PROSPECTIVE JUROR EVANS: Yes.
24 THE COURT: -- and the death penalty?
25 PROSPECTIVE JUROR EVANS: Yes.

1 THE COURT: You could equally consider all of those
2 options, hear the evidence and make a determination, is that
3 correct?
4 PROSPECTIVE JUROR EVANS: Yes.
5 THE COURT: How long you been in Las Vegas?
6 PROSPECTIVE JUROR EVANS: Twenty-two years.
7 THE COURT: And what do you do for a living?
8 PROSPECTIVE JUROR EVANS: I work at Silver State
9 Disposal.
10 THE COURT: And what do you do there?
11 PROSPECTIVE JUROR EVANS: Pick up trash.
12 THE COURT: Okay. Are you married?
13 PROSPECTIVE JUROR EVANS: No.
14 THE COURT: Children?
15 PROSPECTIVE JUROR EVANS: No.
16 THE COURT: You ever been in the military?
17 PROSPECTIVE JUROR EVANS: No.
18 THE COURT: Are you acquainted with anybody in law
19 enforcement?
20 PROSPECTIVE JUROR EVANS: No.
21 THE COURT: You ever been a victim of a crime?
22 PROSPECTIVE JUROR EVANS: No.
23 THE COURT: Have you or anyone closely associated
24 with you ever been -- wake that guy up. I think -- I don't
25 like him sleeping.

1 Have you or anyone closely associated with you ever
2 been arrested for a crime?
3 PROSPECTIVE JUROR EVANS: No, not as I can think of.
4 No.
5 THE COURT: What are you sleeping for? Get this guy
6 outside and give him a little attitude adjustment. This guy
7 right -- that guy there.
8 Have you ever been -- or you any closely associated
9 with you ever been arrested for a crime?
10 PROSPECTIVE JUROR EVANS: No.
11 THE COURT: You ever serve on a jury before?
12 PROSPECTIVE JUROR EVANS: No.
13 THE COURT: And how old are you? Twenty-two?
14 PROSPECTIVE JUROR EVANS: Twenty-two.
15 THE COURT: Do you live alone or with your parents?
16 PROSPECTIVE JUROR EVANS: With my parent.
17 THE COURT: What do your parents do?
18 PROSPECTIVE JUROR EVANS: My mother works at Nevada
19 Power.
20 THE COURT: And what does your father do?
21 PROSPECTIVE JUROR EVANS: I don't live with him.
22 THE COURT: Okay. You live with your mother and she
23 works at Nevada Power.
24 PROSPECTIVE JUROR EVANS: Yeah.
25 THE COURT: You got brothers and sisters?

1 PROSPECTIVE JUROR EVANS: Yeah.
2 THE COURT: Okay. Is there any reason you couldn't
3 be fair and impartial in this case?
4 PROSPECTIVE JUROR EVANS: No.
5 THE COURT: Thank you, sir.
6 Questions? Pass for cause?
7 MR. ROGER: Yes. Mr. --
8
9 MS. McMAHON: Excuse me, I have --
10 THE COURT: What?
11 MS. McMAHON: I'm sorry.
12 MR. ROGER: Mr. Evans, sometimes there are things in
13 people's backgrounds or their situation where they can't give
14 us their full attention during a trial --
15 PROSPECTIVE JUROR EVANS: Um-hmm.
16 MR. ROGER: -- and we need to know about that,
17 because sometimes it weighs heavily on a person's mind. I see
18 that Silver State Disposal has a policy of not paying their
19 employees when they're here.
20 PROSPECTIVE JUROR EVANS: Yeah.
21 MR. ROGER: You understand that this trial could
22 take up to two weeks?
23 PROSPECTIVE JUROR EVANS: Yeah.
24 MR. ROGER: Do you have financial responsibilities?
25 PROSPECTIVE JUROR EVANS: Not right now.

1 MR. ROGER: The fact that they do not pay you for
2 coming down here, do you think that that might have some
3 affect on your ability to give us your full attention during
4 this trial?
5 PROSPECTIVE JUROR EVANS: No.
6 MR. ROGER: Have you ever thought about -- or let me
7 ask you this, what was your first thought when you were called
8 upon to come down and sit as a juror?
9 PROSPECTIVE JUROR EVANS: To learn something.
10 MR. ROGER: Okay. Do you want to be a juror?
11 PROSPECTIVE JUROR EVANS: Sure.
12 MR. ROGER: Why?
13 PROSPECTIVE JUROR EVANS: Just to see how the legal
14 system works.
15 MR. ROGER: You indicate in your questionnaire that
16 you've really never thought about the death penalty and
17 whether or not it's an appropriate punishment. If the
18 decision was solely up to you, would we have capital
19 punishment in this State?
20 PROSPECTIVE JUROR EVANS: Yeah.
21 MR. ROGER: Why?
22 PROSPECTIVE JUROR EVANS: In my opinion some things
23 people do aren't right, regard -- that's bottom line.
24 MR. ROGER: What types of things would you want to
25 hear, from either side, in determining whether or not death is

1 an appropriate punishment?

2 MR. LaPORTA: Your Honor, I'll object to that form
3 of question, that's asking him to commit to certain facts
4 within this case.

5 MR. ROGER: I'm not asking him to commit to certain
6 facts, I'm asking him what considerations he would consider
7 important.

8 THE COURT: That's a pretty tough question, Mr.
9 Roger, you know it's -- unless you want to rephrase it I'm
10 going to sustain the objection.

11 MR. ROGER: Okay. Would you want to hear about a
12 person's social background?

13 PROSPECTIVE JUROR EVANS: Yeah.

14 MR. ROGER: Would you want to hear about the bad
15 things that the person has done in the past?

16 PROSPECTIVE JUROR EVANS: It would have some impact.

17 MR. ROGER: Okay. I asked another one of the jurors
18 about whether or not they believed that psychiatrists or
19 psychologists have an important role in this type of a
20 setting, do you believe or would you want to hear from a
21 psychiatrist or a psychologist?

22 PROSPECTIVE JUROR EVANS: Not -- I mean it's -- it
23 wouldn't be up to me, but not really, it wouldn't -- I'd
24 rather hear from the person than a psychologist.

25 MR. ROGER: You believe in the death penalty?

1 PROSPECTIVE JUROR EVANS: Yes.
2 MR. ROGER: Could you vote for the death penalty
3 personally, if the circumstances were appropriate?
4 PROSPECTIVE JUROR EVANS: Yeah.
5 MR. ROGER: There's some hesitation on your part,
6 you understand that this is very important to both sides --
7 PROSPECTIVE JUROR EVANS: Yes.
8 MR. ROGER: -- to know your true feelings about the
9 death penalty. Do you have some hesitation as to whether or
10 not you could vote for it?
11 PROSPECTIVE JUROR EVANS: No.
12 MR. ROGER: Thank you.
13 Pass for cause.
14 THE COURT: Questions? Pass for cause?
15 MS. McMAHON: Just briefly, Your Honor.
16 Good afternoon. I have your questionnaire in front
17 of me, Mr. Evans, and I know it was very long, okay. One
18 portion of the questionnaire, it asks whether you believe a
19 defendant in a criminal trial should be required to prove his
20 or her innocence, and you had marked that "agreed". Do you
21 understand now, I assume, having been here listening to the
22 Judge and hearing statements, that the defendant in fact has
23 no burden of proof?
24 PROSPECTIVE JUROR EVANS: I didn't hear you, say it
25 again.

1 MS. McMAHON: Do you understand that a defendant in
2 a criminal case is not required to prove his or her innocence?
3 PROSPECTIVE JUROR EVANS: Yeah.
4 MS. McMAHON: The State has the burden --
5 PROSPECTIVE JUROR EVANS: Yeah.
6 MS. McMAHON: -- is that correct?
7 PROSPECTIVE JUROR EVANS: Yeah.
8 MS. McMAHON: One other question, Mr. Evans. If you
9 were to sit as a juror in this case and you found that at time
10 of deliberation that you were not in agreement with the other
11 jurors, would you maintain your position after listening to
12 them or in order to reach a verdict would you change your
13 position?
14 PROSPECTIVE JUROR EVANS: If I felt I had a
15 substantial point I would not change.
16 MS. McMAHON: Okay. Thank you.
17 I have no further questions, we pass for cause.
18 THE COURT: All right. The State's next peremptory
19 challenge.
20 MR. ROGER: The Court's indulgence. Judge, may we
21 approach the bench?
22 THE COURT: Yes.
23 (Off-record bench conference)
24 THE COURT: We have a legal argument, ladies and
25 gentlemen, just please wait outside, it's only going to be a

1 few minutes, I'm going to call you right back in and hurry
2 back in. Just -- Hank, come on, get everybody outside and
3 real quick, and the jury here go out last and then come back
4 in first. All right. Just wait until everybody else leaves.

5 (Prospective Juror are not Present)

6 THE COURT: This is outside the presence of the
7 jury.

8 Why did you want me to excuse the jury, Mr. Roger?

9 MR. ROGER: Judge, we're going to exercise our next
10 peremptory challenge as to Mr. Evans, Juror Number 350.

11 THE COURT: Well, we noticed that -- we notice that
12 Mr. --

13 UNKNOWN SPEAKER: Do you want him in here?

14 MS. McMAHON: Yeah, that's our investigator, Your
15 Honor.

16 THE COURT: All right. That's fine.

17 MR. LaPORTA: That's our investigator, Your Honor.

18 THE COURT: We notice that Mr. Evans is an African
19 American and he's the only African American on the jury and
20 why are you moving to exclude him?

21 Do you have any objections, first of all, the
22 defense have any objections to the State exercising its sixth
23 peremptory challenge against Mr. Evans?

24 MS. McMAHON: Yes, Your Honor, we do. For the
25 record, we believe that it violates the mandate of Batson

1 versus Kentucky, as the Court is aware that young man is the
2 only African American on this jury panel. We would request of
3 the Court ascertain if in fact the State has racially neutral
4 reasons for raising the preemptory and that we be allowed to
5 respond the same as --

6 THE COURT: All right.

7 Mr. Roger.

8 MR. ROGER: Judge, Ms. McMahon perhaps misspoke
9 herself, this is not the only African American jury -- juror
10 on the panel.

11 THE COURT: Well, it's on -- it's on a twelve people
12 we have on a jury so far.

13 MR. ROGER: Right. There is no constitutional
14 requirement that we have African Americans on a jury. What is
15 required is that a jury venire, the entire venire be comprised
16 of a fair cross section of the community. There have been
17 African Americans where they have stipulated to excusing them.
18 My -- the case of Doyle versus State requires that the defense
19 make a prima facie showing that are -- exercise that that
20 preemptory challenge is based upon race, it is not. They have
21 not met that challenge. And so, at a very minimum, Doyle says
22 that the Court can deny their motion and grant the preemptory
23 challenge. But even if we were to be required to provide the
24 Court with our reasoning, I can tell you that it has nothing
25 to do with race, but instead the personal make-up of this

1 juror.

2 Judge, this is a capital murder case. There is no
3 question in our mind that regardless of what mitigating
4 circumstances come out, we're going to be asking for the death
5 penalty. We are entitled to have a juror -- a jury that can
6 in fact vote for the death penalty. There are many
7 intangibles that occur in determining whether or not a person
8 can meet that burden. Simply because they answer the
9 questions in a right way does not necessarily mean, from
10 either side, that that person can in fact vote for the death
11 penalty.

12 Mr. Evans is a twenty-two year old young man who
13 lives at home and certainly has not had to face the very
14 significant decision that he'll have to make in this case, and
15 that's whether or not a person lives or dies. His attitude in
16 the courtroom was one of being cavalier. And he chewed gum
17 during the entire time, his attitude towards my questioning
18 was cavalier and in fact there was at least some hesitation on
19 his part when I asked him if he could actually vote for the
20 death penalty.

21 The United States Supreme Court case which was
22 cited, Parquet versus Elem, 115 Supreme Court, 1700, a 1995
23 case, talked about the three step inquiry that a Court must
24 make when determining whether or not a Batson challenge is
25 appropriate. In that particular case the prosecutors

1 indicated that they were challenging a minority, because the
2 potential juror had long hair -- long, curly hair, and that he
3 also had a moustache, he appeared unkept, he had a goatee, he
4 was -- I believe they also indicated that he was young and
5 that was the reason for challenging that particular juror.
6 And the United States Supreme Court held that that was a
7 racially neutral reason and that a prosecutor's reason should
8 be given a certain amount of deference.

9 Judge, when we selected these jurors -- these
10 juries, there are a lot of intangibles that we take into
11 consideration, but I suggest to the Court this question was an
12 easy one. He is the youngest juror that we have up on there,
13 I don't want a person for the first time to have to decide
14 whether or not someone should live or die. I was not the
15 proponent of this questionnaire, in fact, I opposed it. I
16 don't believe in them. However, the questionnaire that was
17 supplied by the defense, even this witness -- or his juror
18 indicated that this was the first time that he had ever
19 considered whether or not the death penalty was an appropriate
20 form of punishment. Because of all those reasons and not
21 because of the color of his skin, we are exercising that
22 peremptory challenge.

23 MS. McMAHON: If we may respond, Your Honor? With
24 all due respect to Mr. Roger, it is still the position that
25 the challenge in fact is based on race, and I would reiterate

1 again for the record that Mr. Evans is in fact the only Afro-
2 American in the jury box with the prospective panel that we
3 have now. I would remind the Court that many men and women,
4 as we have gone through the voir dire of the jury, have stated
5 that they have not personally thought about the death penalty
6 before. And that's been consistent in the questionnaires and
7 consistent in the responses.

8 Mr. Evans, when questioned by the State and by
9 myself, stated that he in fact was in favor of the death
10 penalty, that he could vote to impose it. He is young, he's
11 22, he is certainly old enough to be on a jury, he's old
12 enough to vote, he's old enough to be in the armed services.
13 We have other young people. It is my best sense that there is
14 no racially neutral reason that applies to him that does not
15 apply to the other jurors, and I would request the Court to
16 deny the State's motion to challenge on a peremptory basis.
17 Thank you.

18 THE COURT: In typical cases I can understand, you
19 know, it would be the first thing you looked to, well, you
20 know, it's the first African-American on the jury and all of a
21 sudden Mr. Roger on the State is challenging him -- or, not
22 challenging, but is perempting him. But then when you listen
23 to the reasons why, he's a young man, he was -- I don't -- you
24 know, these things, all in all, the earring in his ear,
25 chewing gum, lives at home, maybe a little immature, these are

1 the reasons that the State is giving for challenging this
2 individual. The fact that he happens to be a black African-
3 American, you're telling me that's just incidental, Mr. Roger,
4 is that correct?

5 MR. ROGER: I'm not saying it's just incidental, I'm
6 saying that it had no bearing on our decision.

7 THE COURT: And the reason being that he's young,
8 immature, the way he answered the questions, he's a little
9 cavalier, and that's the reason why you want to exercise your
10 -- your peremptory challenge?

11 MR. ROGER: For all the reasons I stated, Judge,
12 that's correct.

13 THE COURT: That's a close call. I'm going to allow
14 the peremptory challenge over your objection. I just think,
15 after hearing that, and after indicating what Mr. Roger
16 indicated, he's a young man, a lot of times prosecutors don't
17 want young men, they want to exclude them, they want older
18 mature people. It's a peremptory challenge, it's not a
19 challenge for cause, and let the record reflect that.

20 Bring in back the jury.

21 (Prospective Jurors Reconvened)

22 THE COURT: The State could exercise its sixth
23 peremptory challenge if it sees fit.

24 MR. ROGER: Thank and excuse Juror Number 350, Mr.
25 Evans.

1 THE COURT: All right, Mr. Evans, please report back
2 to Room 1013. The clerk will call another prospective juror?
3 THE CLERK: Badge number 351, Doris Stuart.
4 THE COURT: Doris Stuart. Take that same seat, Ms.
5 Stuart. How long have you been in Las Vegas?
6 PROSPECTIVE JUROR STUART: Forty-two years.
7 THE COURT: All right. A long time, Ms. Stuart.
8 The qualifications regarding this particular case, you know
9 this case could go into two phases, the trial phase and the
10 penalty phase. If the jury finds the defendant guilty of
11 first degree murder then we go into the penalty phase. Do you
12 understand that?
13 PROSPECTIVE JUROR STUART: Yes.
14 THE COURT: And it's incumbent upon the jury to
15 determine the punishment. And the possible punishments are
16 life with the possibility of parole, life without the
17 possibility of parole, or the imposition of the death penalty.
18 Do you understand that?
19 PROSPECTIVE JUROR STUART: Yes.
20 THE COURT: Would you be --
21 PROSPECTIVE JUROR STUART: That's what I have a
22 problem with there.
23 THE COURT: Yeah, that's why we're here. That's why
24 we've been here all morning and all afternoon. Could you --
25 and the law says you should be able to consider them all

1 equally and determine what the punishment, in this particular
2 case, should be. Do you understand that?
3 PROSPECTIVE JUROR STUART: Yes.
4 THE COURT: So, my question to you is would you be
5 able to equally consider all the possible punishments, those
6 three punishments?
7 PROSPECTIVE JUROR STUART: No, I could not.
8 THE COURT: Why not?
9 PROSPECTIVE JUROR STUART: Well, death, I don't
10 believe in -- I don't think I have the right to decide whether
11 a person should live or die.
12 THE COURT: Then is that a religious feeling, or --
13 PROSPECTIVE JUROR STUART: No, it's not, it's my
14 belief. It's what I believe in, in my heart and my soul.
15 THE COURT: Have you always held that belief?
16 PROSPECTIVE JUROR STUART: Yes, I have.
17 MR. SCHWARTZ: Challenge for cause, Your Honor.
18 MR. LaPORTA: No objection, Your Honor.
19 THE COURT: Please report back to Room 1013. The
20 clerk call another prospective juror.
21 THE CLERK: Badge number 352, David Kelker.
22 THE COURT: David?
23 PROSPECTIVE JUROR KELKER: Yes.
24 THE COURT: Take the same seat there. Again, if the
25 jury convicts the defendant of first degree murder, only if

1 that reason then we go into the penalty phase. Do you
2 understand that?
3 PROSPECTIVE JUROR KELKER: Yes, sir.
4 THE COURT: Could you equally consider all the
5 punishments, life with, life without, and death?
6 PROSPECTIVE JUROR KELKER: Yes, sir.
7 THE COURT: How long have you been in Las Vegas?
8 PROSPECTIVE JUROR KELKER: Ten years.
9 THE COURT: What do you do for a living?
10 PROSPECTIVE JUROR KELKER: I work for the National
11 Park Service at Lake Mead.
12 THE COURT: In what capacity?
13 PROSPECTIVE JUROR KELKER: Equipment operator
14 foreman, road foreman.
15 THE COURT: All right. Are you married?
16 PROSPECTIVE JUROR KELKER: No, sir.
17 THE COURT: Children?
18 PROSPECTIVE JUROR KELKER: No children.
19 THE COURT: You ever been in the military?
20 PROSPECTIVE JUROR KELKER: Yes, I have.
21 THE COURT: What branch?
22 PROSPECTIVE JUROR KELKER: Army, '68 through '70.
23 THE COURT: Did you do anything with the military
24 police or court martialing?
25 PROSPECTIVE JUROR KELKER: No, sir.

1 THE COURT: You acquainted with anybody in law
2 enforcement?
3 PROSPECTIVE JUROR KELKER: The rangers up in the
4 park, yes.
5 THE COURT: Yeah. All right. The fact that you
6 know some rangers, because you work in the -- as an equipment
7 operator, that's not going to affect your deliberation?
8 PROSPECTIVE JUROR KELKER: No, sir.
9 THE COURT: You know you're not to give greater
10 weight or lesser weight to a police officer's testimony,
11 simply because they're a police officer. Do you understand
12 that?
13 PROSPECTIVE JUROR KELKER: Yes, I do.
14 THE COURT: You ever been a victim of a crime?
15 PROSPECTIVE JUROR KELKER: Just car vandalism.
16 THE COURT: They never caught the individuals?
17 PROSPECTIVE JUROR KELKER: No, sir.
18 THE COURT: That's not going to affect your
19 deliberations?
20 PROSPECTIVE JUROR KELKER: No, sir.
21 THE COURT: Have you ever or anyone closely
22 associated with you ever been arrested for a crime?
23 PROSPECTIVE JUROR KELKER: No, sir.
24 THE COURT: You ever serve on a jury before?
25 PROSPECTIVE JUROR KELKER: No, I haven't.

1 THE COURT: Any reason you couldn't be fair and
2 impartial?
3 PROSPECTIVE JUROR KELKER: There's no reason.
4 THE COURT: Questions, pass for cause?
5 MR. ROGER: Pass for cause.
6 THE COURT: Questions, pass for cause?
7 MS. McMAHON: Pass for cause, Your Honor.
8 THE COURT: All right. The defense next peremptory
9 challenge? Is the defense next?
10 MR. LaPORTA: Yes, Your Honor, we are.
11 MS. McMAHON: Your Honor, thank you for your
12 indulgence. The defense would thank and excuse Juror Number
13 338, Mr. Benoit.
14 THE COURT: All right, Mr. Benoit, report back to
15 Room 1013. The clerk call another prospective juror.
16 THE CLERK: Badge number 353, Jacqueline Bell.
17 THE COURT: Jacqueline Bell?
18 PROSPECTIVE JUROR BELL: Yes.
19 THE COURT: How long you been in Las Vegas, Ms.
20 Bell?
21 PROSPECTIVE JUROR BELL: Almost seven years.
22 THE COURT: All right. Again, this is the type of
23 case, Ms. Bell, that could go into two phases; one is the
24 trial phase and the other one's the penalty phase. If the
25 jury determines the defendant is guilty of first degree murder

1 the penalty phase kicks in and the jury determines what the
2 punishment is. Do you understand that?
3 PROSPECTIVE JUROR BELL: [No audible response].
4 THE COURT: And there's three options under our law.
5 There's life with the possibility of parole, life without the
6 possibility of parole and imposition of death penalty. Do you
7 understand that?
8 PROSPECTIVE JUROR BELL: Yes.
9 THE COURT: Would you equally consider all of those
10 options in reaching a verdict?
11 PROSPECTIVE JUROR BELL: I would like more
12 information on it.
13 THE COURT: Sure. You're going to get information.
14 I mean, at the penalty phase we have evidence and testimony,
15 and we have argument, and we have instructions, and you'll be
16 given all the instructions. All we're concerned about right
17 now is you have those three options, would you equally
18 consider them, and after you hear the evidence, you make a
19 determination as what you think is appropriate.
20 PROSPECTIVE JUROR BELL: Yes.
21 THE COURT: You could do that? And how long you
22 been in Las Vegas?
23 PROSPECTIVE JUROR BELL: Almost seven years.
24 THE COURT: And what do you do for a living?
25 PROSPECTIVE JUROR BELL: I work at Costco.

1 THE COURT: All right. What do you do there?
2 PROSPECTIVE JUROR BELL: Cashier.
3 THE COURT: Cashier. Are you married?
4 PROSPECTIVE JUROR BELL: No.
5 THE COURT: Children?
6 PROSPECTIVE JUROR BELL: No.
7 THE COURT: You ever been in the military?
8 PROSPECTIVE JUROR BELL: No.
9 THE COURT: Acquainted with anybody in law
10 enforcement?
11 PROSPECTIVE JUROR BELL: No.
12 THE COURT: You ever been a victim of a crime?
13 PROSPECTIVE JUROR BELL: No.
14 THE COURT: Have you or anyone closely associated
15 with you ever been arrested for a crime?
16 PROSPECTIVE JUROR BELL: My stepfather, a long time
17 ago, but we're not really that close.
18 THE COURT: All right. What was the crime, do you
19 remember?
20 PROSPECTIVE JUROR BELL: I don't even remember.
21 THE COURT: All right. That's not going to affect
22 your deliberations?
23 PROSPECTIVE JUROR BELL: No.
24 THE COURT: You ever serve on a jury?
25 PROSPECTIVE JUROR BELL: No.

1 THE COURT: How old are you?
2 PROSPECTIVE JUROR BELL: Forty-two.
3 THE COURT: Okay. Any reason you couldn't be a fair
4 and impartial juror in this case?
5 PROSPECTIVE JUROR BELL: No.
6 THE COURT: Thank you. Questions, pass for cause?
7 MR. SCHWARTZ: Yes. Thank you, Your Honor. Good
8 afternoon, ma'am. On the sheet that you filled out, on page
9 19 where there's an explanation sheet, you wrote I don't know
10 who could really decide the guilt or innocence of anyone. Do
11 you feel that it would be difficult for you to sit in judgment
12 of another human being?
13 PROSPECTIVE JUROR BELL: Yeah, but I feel it's my
14 obligation.
15 MR. SCHWARTZ: Okay. If you are selected as a juror
16 and the State presented evidence to you, as well as the
17 defense, at the conclusion of the trial you felt that the
18 State had proven the defendant guilty of two murders in the
19 first degree, beyond a reasonable doubt, could you come into
20 this courtroom and convict or announce a verdict of guilty in
21 front of the defendant?
22 PROSPECTIVE JUROR BELL: Yes.
23 MR. SCHWARTZ: And if that should happen, as the
24 Judge has told you, you would have to go into a penalty phase.
25 And at that time it would be like a second trial, but probably

1 a lot shorter. You'd hear evidence and you'd be given jury
2 instructions, and you'd have to determine the appropriate
3 punishment. If, after hearing all the evidence, you felt the
4 only appropriate punishment for the two killings would be the
5 death penalty, could you yourself come into this courtroom and
6 announce or vote a verdict of death?

7 PROSPECTIVE JUROR BELL: Yes.

8 MR. SCHWARTZ: You're certain about that?

9 PROSPECTIVE JUROR BELL: Yes.

10 THE COURT: Thank you. Pass for cause, Your Honor.

11 THE COURT: Questions, pass for cause?

12 MR. LaPORTA: Yes, Your Honor. Good afternoon. How
13 are you?

14 PROSPECTIVE JUROR BELL: Okay.

15 MR. LaPORTA: You could consider all three equally,
16 is that correct?

17 PROSPECTIVE JUROR BELL: Yes.

18 MR. LaPORTA: After the guilt phase, if the State is
19 successful in convicting of Mr. Thomas of intentionally
20 murdering two other human beings, you could consider life with
21 or without the possibility of parole?

22 PROSPECTIVE JUROR BELL: Well, I'd like more
23 information.

24 MR. LaPORTA: Well, without more information, what
25 I'm asking you is at this juncture could you consider -- could

1 you conceive of a situation where you would consider all three
2 equally, after having just heard all the evidence, and
3 convicting Mr. Thomas of intentionally murdering two other
4 human beings?

5 PROSPECTIVE JUROR BELL: Yes.

6 MR. LaPORTA: You could consider the two other forms
7 of punishment, life with or without the possibility of parole?

8 PROSPECTIVE JUROR BELL: Yes.

9 MR. LaPORTA: Do you consider life imprisonment a
10 harsh punishment or do you consider --

11 PROSPECTIVE JUROR BELL: Yes.

12 MR. LaPORTA: -- it giving the defendant a break?

13 PROSPECTIVE JUROR BELL: I consider it a harsh
14 punishment.

15 MR. LaPORTA: All right. You understand that the
16 State has to prove beyond a reasonable doubt, at least one of
17 their aggravators, before you can consider the death penalty,
18 you understand that?

19 PROSPECTIVE JUROR BELL: Yes.

20 MR. LaPORTA: All right. And you also understand
21 that because they proved beyond a reasonable doubt, one of
22 their aggravators, that you do not have to return the death
23 penalty? You understand that?

24 PROSPECTIVE JUROR BELL: Yes.

25 MR. LaPORTA: All right. That you -- even though

1 they've proven that, you can still consider and impose life
2 with or without the possibility of parole?

3 PROSPECTIVE JUROR BELL: Yes.

4 MR. LaPORTA: All right. Pass for cause, Your
5 Honor.

6 THE COURT: All right. The State's seventh?

7 MR. SCHWARTZ: Judge, we'll thank and excuse Ms.
8 Bell, 353.

9 THE COURT: All right. Ms. Bell, please report back
10 to Room 1013.

11 Clerk, call another prospective juror.

12 THE CLERK: Badge number 355, Valerie Patronelli.

13 THE COURT: Take that same seat up there, Ms.
14 Patronelli. How long you been in Las Vegas?

15 PROSPECTIVE JUROR PATRONELLI: Five years.

16 THE COURT: All right. And what we've been going
17 through, Ms. Patronelli, is this case could perhaps go into
18 two phases, a trial phase and a penalty phase. And if the
19 jury finds the defendant guilty of first degree murder the
20 penalty phase kicks in and by law the jury imposes punishment.
21 They could either -- they could consider life with the
22 possibility of parole, life without the possibility of parole,
23 or the imposition of the death penalty. Do you understand
24 that?

25 PROSPECTIVE JUROR PATRONELLI: Yes.

1 THE COURT: And you would equally consider all of
2 those options and make a determination?
3 PROSPECTIVE JUROR PATRONELLI: No, sir.
4 THE COURT: And why not?
5 PROSPECTIVE JUROR PATRONELLI: I feel if a person
6 has been convicted by jurors to be guilty, that they should be
7 sentenced to death.
8 THE COURT: You'd put everybody to death then,
9 everybody would be put to death in a murder trial?
10 PROSPECTIVE JUROR PATRONELLI: Yeah. If they're
11 convicted by --
12 THE COURT: Where did you get that notion?
13 PROSPECTIVE JUROR PATRONELLI: -- twelve other
14 people.
15 THE COURT: Well, that's not the law though, don't
16 you understand that's not the law of the state, it's not the
17 law --
18 PROSPECTIVE JUROR PATRONELLI: No.
19 THE COURT: -- of the United States, it's not the
20 law of this state, it's not the law of all the fifty states
21 that we have. Do you understand that? So, you just don't
22 want to follow the law, is that correct?
23 PROSPECTIVE JUROR PATRONELLI: No, I'm not saying
24 that.
25 THE COURT: What are you saying?

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1 PROSPECTIVE JUROR PATRONELLI: What I'm saying is --
2 what I'm saying is I'm tired of people living off the system.
3 I mean, I'm a single person trying to support myself. Now,
4 some of these people that get life imprisonment, they've got
5 more dental than I have, more medical than I have --
6 THE COURT: I don't want to hear you anymore.
7 PROSPECTIVE JUROR PATRONELLI: -- a roof over their
8 head --
9 THE COURT: Any other judgment here, please?
10 Anybody have a motion?
11 MR. LaPORTA: Challenge for cause, Your Honor.
12 THE COURT: Report back to Room 1013.
13 PROSPECTIVE JUROR PATRONELLI: Thank you.
14 THE COURT: Clerk, call another prospective juror.
15 THE CLERK: Badge number 357, Eugene Steffek.
16 THE COURT: Sir, take that same seat, sir. How long
17 you been in Las Vegas?
18 PROSPECTIVE JUROR STEFFEK: Two years.
19 THE COURT: Could you equally consider, if this goes
20 into a penalty phase, life with the possibility of parole,
21 life without the possibility of parole, or the imposition of
22 the death penalty?
23 PROSPECTIVE JUROR STEFFEK: And if it's --
24 THE COURT: This is no laughing matter, please.
25 We're not -- this is a very serious matter, and --

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1 PROSPECTIVE JUROR STEFFEK: First degree murder, I
2 would --
3 THE COURT: Yes. You have to find --
4 PROSPECTIVE JUROR STEFFEK: -- I would say that --
5 THE COURT: -- the defendant guilty of first degree
6 murder, then the penalty --
7 PROSPECTIVE JUROR STEFFEK: -- I would say that --
8 THE COURT: -- phase kicks in, and the law provides
9 the three possible penalties. And it's up to the jury, after
10 hearing the facts and circumstances, they determine what the
11 best appropriate penalty is. And that's the -- that's your
12 prerogative, you do what you want to do, the jurors -- now,
13 could you equally consider those three possible penalties?
14 PROSPECTIVE JUROR STEFFEK: No.
15 THE COURT: Why?
16 PROSPECTIVE JUROR STEFFEK: Because I believe if a
17 person has committed a first degree murder, that it should be
18 the death penalty.
19 THE COURT: And where did you get that belief?
20 PROSPECTIVE JUROR STEFFEK: That's -- ever since I
21 became of age to even think about it.
22 THE COURT: Okay.
23 MR. LaPORTA: Challenge for cause, Your Honor.
24 THE COURT: Please report back to Room 1013.
25 Another prospective juror?

1 THE CLERK: Badge number 359, Sharon Teichman.
2 THE COURT: Ms. Teichman, could you equally consider
3 life with the possibility of parole, life without, or the
4 death penalty?
5 PROSPECTIVE JUROR TEICHMAN: Yes, I can.
6 THE COURT: How long you been in Las Vegas?
7 PROSPECTIVE JUROR TEICHMAN: Seven years.
8 THE COURT: And what do you do for a living?
9 PROSPECTIVE JUROR TEICHMAN: I work for a law firm
10 as a mail room supervisor.
11 THE COURT: What law firm is that?
12 PROSPECTIVE JUROR TEICHMAN: Kummer Kaempfer Bonner
13 and Renshaw.
14 THE COURT: It seems to be like mostly a civil, a
15 civil law firm?
16 PROSPECTIVE JUROR TEICHMAN: Yes.
17 THE COURT: All right. And are you married?
18 PROSPECTIVE JUROR TEICHMAN: No, I'm divorced, but I
19 have four small children.
20 THE COURT: All right. Have you ever been in the
21 military?
22 PROSPECTIVE JUROR TEICHMAN: No.
23 THE COURT: Are you acquainted with anybody in law
24 enforcement?
25 PROSPECTIVE JUROR TEICHMAN: The closest person I

1 know is a Henderson policeman who's the father or a coaches --
2 husband of a softball team.

3 THE COURT: All right. But that's not going to
4 affect your deliberations?

5 PROSPECTIVE JUROR TEICHMAN: Not at all.

6 THE COURT: And you understand you're not to give
7 greater weight or lesser weight to a police officer's
8 testimony simply because they're a police officer? Is that
9 the way you understand that?

10 PROSPECTIVE JUROR TEICHMAN: I understand.

11 THE COURT: Have you ever been a victim of a crime?

12 PROSPECTIVE JUROR TEICHMAN: No.

13 THE COURT: Have you ever -- have you or anyone
14 closely associated with you ever been arrested for a crime?

15 PROSPECTIVE JUROR TEICHMAN: No, I have not.

16 THE COURT: You ever served on a jury before?

17 PROSPECTIVE JUROR TEICHMAN: No, I have not.

18 THE COURT: Any reason you couldn't be fair and
19 impartial?

20 PROSPECTIVE JUROR TEICHMAN: No.

21 THE COURT: Thank you. Questions, pass for cause?

22 MR. SCHWARTZ: Pass for cause, Your Honor.

23 THE COURT: Questions, pass for cause?

24 MR. LaPORTA: Yes, Your Honor, briefly. Good
25 afternoon. You stated earlier that you could consider all

1 three possible forms of punishment. You understand that you
2 only get to that level or to that phase if you and eleven
3 other jurors have found that Mr. Thomas has intentionally
4 murdered two human beings?

5 PROSPECTIVE JUROR TEICHMAN: Correct.

6 MR. LaPORTA: You understand that?

7 PROSPECTIVE JUROR TEICHMAN: Yes.

8 MR. LaPORTA: And, knowing that, you still feel that
9 you could consider life with or without the possibility of
10 parole?

11 PROSPECTIVE JUROR TEICHMAN: Yes, I do.

12 MR. LaPORTA: Do you consider the life in prison a
13 harsh punishment?

14 PROSPECTIVE JUROR TEICHMAN: Yes, I do.

15 MR. LaPORTA: And do you think that by -- if you
16 were to find your way, if he is so convicted, to vote for one
17 of the life's, do you feel like you might be cutting him a
18 break or do you feel like you would be punishing him in this
19 situation?

20 PROSPECTIVE JUROR TEICHMAN: I feel they're all
21 punishments in some degree.

22 MR. LaPORTA: Okay. But none are really breaks?

23 PROSPECTIVE JUROR TEICHMAN: No.

24 MR. LaPORTA: Is that your feeling?

25 PROSPECTIVE JUROR TEICHMAN: No, I don't think they

1 are a break.
2 MR. LaPORTA: Pass for cause, Your Honor.
3 THE COURT: The defense next peremptory challenge?
4 MS. McMAHON: Your Honor, the defense would excuse
5 Juror Number 318, Ms. Grannon.
6 THE COURT: Please report back to Room 1013. Clerk,
7 call another prospective juror.
8 THE CLERK: Badge number 360, James Lewis.
9 THE COURT: Just take that same seat, Mr. Lewis.
10 What did you do with your arm, hurt it?
11 PROSPECTIVE JUROR LEWIS: I had surgery Monday, sir.
12 THE COURT: Oh, are you all right now?
13 PROSPECTIVE JUROR LEWIS: Oh, yeah.
14 THE COURT: Are you able to concentrate?
15 PROSPECTIVE JUROR LEWIS: Shoot.
16 THE COURT: Sir, this case might be a case that
17 involves two possible phases. One would be the trial phase.
18 If the jury finds and determines that the defendant is guilty
19 beyond a reasonable doubt, then we would kick into the penalty
20 phase. And, again, by statute and law it's incumbent upon the
21 jury to impose the punishment. The options are life with the
22 possibility of parole, life without the possibility of parole,
23 and the imposition of the death penalty. Do you understand
24 that?
25 PROSPECTIVE JUROR LEWIS: Yes, sir.

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1 THE COURT: Would you equally consider all those
2 options?
3 PROSPECTIVE JUROR LEWIS: Yes, sir.
4 THE COURT: How long you been in Las Vegas?
5 PROSPECTIVE JUROR LEWIS: Twenty-two years.
6 THE COURT: What do you do for a living?
7 PROSPECTIVE JUROR LEWIS: I work for the Department
8 of Prisons as an accountant.
9 THE COURT: Okay. Now, what prison?
10 PROSPECTIVE JUROR LEWIS: Indian Springs.
11 THE COURT: How long you been doing that?
12 PROSPECTIVE JUROR LEWIS: Two years now.
13 THE COURT: And you work actually up in the prison
14 there?
15 PROSPECTIVE JUROR LEWIS: It's in the admin building
16 section, but I have occasion to go out on --
17 THE COURT: And so, you're an employee of the
18 Department of Prisons?
19 PROSPECTIVE JUROR LEWIS: Yes, sir.
20 THE COURT: You're not considered a peace officer?
21 PROSPECTIVE JUROR LEWIS: No.
22 THE COURT: You're a civil employee then?
23 PROSPECTIVE JUROR LEWIS: Yes, sir.
24 THE COURT: And you've been doing that for two
25 years?

1 PROSPECTIVE JUROR LEWIS: Yes, sir.
2 THE COURT: Is that going to affect your
3 deliberations, the fact that you work in a prison?
4 PROSPECTIVE JUROR LEWIS: No.
5 THE COURT: That's just in the administrative
6 aspect?
7 PROSPECTIVE JUROR LEWIS: Yes, sir.
8 THE COURT: You're not out in the yard or anything
9 like that?
10 PROSPECTIVE JUROR LEWIS: I have occasion to go out
11 there and talk to the inmates sometime who sit on
12 disciplinaries.
13 THE COURT: Okay. You married?
14 PROSPECTIVE JUROR LEWIS: Yes, sir.
15 THE COURT: What does your wife do?
16 PROSPECTIVE JUROR LEWIS: She works at Bally's,
17 personnel.
18 THE COURT: Children?
19 PROSPECTIVE JUROR LEWIS: Two children.
20 THE COURT: What do they do for a living?
21 PROSPECTIVE JUROR LEWIS: Pardon me, sir?
22 THE COURT: What do they do for a living?
23 PROSPECTIVE JUROR LEWIS: Well, my son's a GIS
24 technician for the City, and my daughter's a high school
25 student.

1 THE COURT: Okay. You ever been the victim of a
2 crime?
3 PROSPECTIVE JUROR LEWIS: No, sir.
4 THE COURT: Have you or anyone closely associated to
5 you ever been arrested for a crime?
6 PROSPECTIVE JUROR LEWIS: I was.
7 THE COURT: What were you arrested for?
8 PROSPECTIVE JUROR LEWIS: Twelve years ago, a DUI.
9 THE COURT: For?
10 PROSPECTIVE JUROR LEWIS: A DUI.
11 THE COURT: And it was resolved?
12 PROSPECTIVE JUROR LEWIS: Yes, sir.
13 THE COURT: And that's not going to affect your
14 deliberations?
15 PROSPECTIVE JUROR LEWIS: No, sir.
16 THE COURT: Have you ever served on a jury before?
17 PROSPECTIVE JUROR LEWIS: Yes, sir, twice.
18 THE COURT: What was the first time, criminal or
19 civil?
20 PROSPECTIVE JUROR LEWIS: Criminal.
21 THE COURT: What was the charge?
22 PROSPECTIVE JUROR LEWIS: Burglary.
23 THE COURT: And you were picked as a juror?
24 PROSPECTIVE JUROR LEWIS: Yes.
25 THE COURT: Were you picked as foreperson?

1 PROSPECTIVE JUROR LEWIS: No, sir.
2 THE COURT: You deliberated the case?
3 PROSPECTIVE JUROR LEWIS: Yes, sir.
4 THE COURT: Without telling me what the verdict, did
5 the jury reach a verdict?
6 PROSPECTIVE JUROR LEWIS: Yes, sir.
7 THE COURT: The second time, criminal or civil?
8 PROSPECTIVE JUROR LEWIS: Criminal.
9 THE COURT: What was the charge?
10 PROSPECTIVE JUROR LEWIS: Child molestation.
11 THE COURT: Were you picked as a juror?
12 PROSPECTIVE JUROR LEWIS: Yes, sir.
13 THE COURT: Were you picked as foreperson?
14 PROSPECTIVE JUROR LEWIS: No, sir.
15 THE COURT: Without telling me what the verdict was,
16 did the jury reach a verdict?
17 PROSPECTIVE JUROR LEWIS: No, sir.
18 THE COURT: All right. Any reason you couldn't be
19 fair and impartial in this case?
20 PROSPECTIVE JUROR LEWIS: No.
21 THE COURT: All right. Questions, pass for cause?
22 MR. ROGER: Pass for cause.
23 THE COURT: Questions, pass for cause?
24 MS. McMAHON: Pass for cause, Your Honor.
25 THE COURT: The State's eighth and final peremptory

1 challenge.

2 MR. ROGER: We'll waive our last peremptory
3 challenge.

4 THE COURT: The defense eighth and final peremptory
5 challenge?

6 MR. LaPORTA: The Court's indulgence.

7 (Off-record colloquy)

8 MR. LaPORTA: Your Honor, the defense thanks and
9 excuses Juror Number 334.

10 THE COURT: What's the name? Mr. Layton?

11 PROSPECTIVE JUROR LAYTON: Yes.

12 THE COURT: Thank you. Report back to Room 1013.

13 The clerk, call another prospective juror.

14 THE CLERK: Badge number 361, Roger Pankewicz.

15 THE COURT: How long you been in Las Vegas, Mr.
16 Pankewicz?

17 PROSPECTIVE JUROR PANKIEWICZ: Two and a half years.

18 THE COURT: All right. Again, this case might be a
19 case that involves two phases. One would be the trial phase.
20 Only if the jurors find the defendant guilty of first degree
21 murder, if they don't then that's -- we don't go into the
22 penalty phase, but if they do the penalty phase provides that
23 the jury set punishment as either life with the possibility of
24 parole, life without, or imposition of the death penalty. Do
25 you understand that?

1 PROSPECTIVE JUROR PANKEWICZ: Yes.
2 THE COURT: Would you equally consider all of those
3 options after hearing the facts?
4 PROSPECTIVE JUROR PANKEWICZ: Yes.
5 THE COURT: And where did you come from before you
6 came to Las Vegas?
7 PROSPECTIVE JUROR PANKEWICZ: Michigan and
8 California.
9 THE COURT: What type of work did you do there?
10 PROSPECTIVE JUROR PANKEWICZ: I was always self-
11 employed. I had my own business.
12 THE COURT: Doing what?
13 PROSPECTIVE JUROR PANKEWICZ: Antique business and a
14 couple of flower shops.
15 THE COURT: All right. And are you working here
16 now?
17 PROSPECTIVE JUROR PANKEWICZ: No, I'm retired.
18 THE COURT: Retired. Are you married?
19 PROSPECTIVE JUROR PANKEWICZ: No.
20 THE COURT: Children?
21 PROSPECTIVE JUROR PANKEWICZ: No.
22 THE COURT: You ever been in the military?
23 PROSPECTIVE JUROR PANKEWICZ: No.
24 THE COURT: Acquainted with anybody in law
25 enforcement?

1 PROSPECTIVE JUROR PANKEWICZ: No.
2 THE COURT: Have you ever been the victim of a
3 crime?
4 PROSPECTIVE JUROR PANKEWICZ: I have. My business
5 was broken into a couple times.
6 THE COURT: Did they ever catch the individuals?
7 PROSPECTIVE JUROR PANKEWICZ: No.
8 THE COURT: You've never had to appear in court?
9 PROSPECTIVE JUROR PANKEWICZ: No.
10 THE COURT: That's not going to affect your
11 deliberations?
12 PROSPECTIVE JUROR PANKEWICZ: No.
13 THE COURT: Have you or anyone closely associated
14 with you ever been arrested for a crime?
15 PROSPECTIVE JUROR PANKEWICZ: I had a DUI about
16 twenty years ago in California.
17 THE COURT: That's not going to affect your
18 deliberation, is it? You don't hold that against the State or
19 anything?
20 PROSPECTIVE JUROR PANKEWICZ: No.
21 THE COURT: You ever serve on a jury before?
22 PROSPECTIVE JUROR PANKEWICZ: No, I haven't.
23 THE COURT: Any reason you couldn't be fair and
24 impartial on this case?
25 PROSPECTIVE JUROR PANKEWICZ: I don't think so.

1 THE COURT: Thank you, sir. Questions, pass for
2 cause?
3 MR. SCHWARTZ: Pass for cause, Your Honor.
4 THE COURT: Questions, pass for cause?
5 MR. LaPORTA: Pass for cause.
6 THE COURT: All right. Let's call two alternate
7 jurors. Ms. Clerk?
8 THE CLERK: Badge number 363, Louis Mizzoni and
9 badge number 364, Mercedes Cerice-Ortiz.
10 THE COURT: All right, Mr. Mizzoni?
11 PROSPECTIVE JUROR MIZZONI: Yes, sir.
12 THE COURT: Please take that seat up there. And Ms.
13 Cerice-Ortiz, take the seat down there.
14 Mr. Mizzoni, you've heard the questions we've talked
15 about here, and you've been in court -- no, down here, ma'am.
16 This is a case that might get involved in two phases, and only
17 if the jury finds the defendant guilty of first degree murder.
18 Then we might go into a penalty phase. You understand that?
19 PROSPECTIVE JUROR MIZZONI: Yes, sir.
20 THE COURT: And the jury sets punishment, and by law
21 the possible punishments are life with, life without, and the
22 death penalty. Could you equally consider those punishments?
23 PROSPECTIVE JUROR MIZZONI: I have a problem with
24 life with parole.
25 THE COURT: And why is that, sir? I mean --

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1 PROSPECTIVE JUROR MIZZONI: I don't feel anybody
2 that's convicted of a double murder first degree should ever
3 walk.

4 THE COURT: Well, this is what the law provides,
5 though. You can consider all of it and you make your
6 determination based on the facts.

7 PROSPECTIVE JUROR MIZZONI: I understand that, Your
8 Honor, but in my mind there's just no excuse for that, as far
9 as I'm concerned. I'm sorry.

10 MR. LaPORTA: Challenge for cause, Your Honor.

11 MR. SCHWARTZ: No objection.

12 THE COURT: Please report back to Room 1013.

13 Another prospective?

14 THE CLERK: Badge number 365, Barbara Wilson.

15 THE COURT: Ms. Wilson, take that seat up there.

16 You've heard what we had to say, Ms. Wilson. Could you
17 equally or would you be able to equally consider all of those
18 punishments, life with, life without, and the death penalty?

19 PROSPECTIVE JUROR WILSON: Yes, I could.

20 THE COURT: How long you been in Las Vegas?

21 PROSPECTIVE JUROR WILSON: Six years.

22 THE COURT: And what do you do for a living?

23 PROSPECTIVE JUROR WILSON: Retired.

24 THE COURT: What did you do when you worked?

25 PROSPECTIVE JUROR WILSON: Oh, I worked in data

1 processing at a steel company.
2 THE COURT: All right. Are you married?
3 PROSPECTIVE JUROR WILSON: Yes.
4 THE COURT: What does your husband do, is he
5 retired?
6 PROSPECTIVE JUROR WILSON: Retired too.
7 THE COURT: What did he do for a living?
8 PROSPECTIVE JUROR WILSON: Oh, he was a produce
9 manager for Von's Foods.
10 THE COURT: Children? Do you have any children?
11 PROSPECTIVE JUROR WILSON: A grown daughter.
12 THE COURT: What does your daughter do for a living?
13 PROSPECTIVE JUROR WILSON: She travels and promotes
14 the new software.
15 THE COURT: Have you ever been in the military?
16 PROSPECTIVE JUROR WILSON: No.
17 THE COURT: You acquainted with anybody in law
18 enforcement?
19 PROSPECTIVE JUROR WILSON: No, not here.
20 THE COURT: All right. Anyplace?
21 PROSPECTIVE JUROR WILSON: In California.
22 THE COURT: And who do you know, just a friend?
23 PROSPECTIVE JUROR WILSON: Yeah, there was a
24 policeman in --
25 THE COURT: Friends?

1 PROSPECTIVE JUROR WILSON: Yeah.
2 THE COURT: Not relatives, friends?
3 PROSPECTIVE JUROR WILSON: Friends, friends.
4 THE COURT: The fact that you know -- have friends
5 that are police officers, that's not going to affect your
6 deliberations?
7 PROSPECTIVE JUROR WILSON: Oh, no.
8 THE COURT: You understand you're not to give
9 greater weight or lesser weight to a police officer's
10 testimony simply because they're a police officer?
11 PROSPECTIVE JUROR WILSON: Right.
12 THE COURT: You ever been the victim of a crime?
13 PROSPECTIVE JUROR WILSON: No.
14 THE COURT: Have you or anyone closely associated to
15 you ever been arrested for a crime?
16 PROSPECTIVE JUROR WILSON: No.
17 THE COURT: You ever serve on a jury?
18 PROSPECTIVE JUROR WILSON: Yes.
19 THE COURT: When was that, one time or --
20 PROSPECTIVE JUROR WILSON: Two times.
21 THE COURT: Two times. Was the first one, criminal
22 or civil?
23 PROSPECTIVE JUROR WILSON: Criminal.
24 THE COURT: What was the charge?
25 PROSPECTIVE JUROR WILSON: Murder.

1 THE COURT: You were picked -- was it a death
2 penalty case?
3 PROSPECTIVE JUROR WILSON: [No audible response].
4 THE COURT: You were picked -- where was that, what
5 state?
6 PROSPECTIVE JUROR WILSON: In Los Angeles.
7 THE COURT: You were picked as a juror?
8 PROSPECTIVE JUROR WILSON: Right.
9 THE COURT: You deliberated the case?
10 PROSPECTIVE JUROR WILSON: Yes.
11 THE COURT: Were you picked as foreperson?
12 PROSPECTIVE JUROR WILSON: No.
13 THE COURT: Without telling me what the verdict was,
14 did the jury reach a verdict?
15 PROSPECTIVE JUROR WILSON: They did.
16 THE COURT: And your second, was it a criminal or a
17 civil?
18 PROSPECTIVE JUROR WILSON: Civil.
19 THE COURT: Were you picked as a juror?
20 PROSPECTIVE JUROR WILSON: Right.
21 THE COURT: You deliberated the case?
22 PROSPECTIVE JUROR WILSON: Right.
23 THE COURT: Without telling me what the verdict was,
24 did the jury reach a verdict?
25 PROSPECTIVE JUROR WILSON: They did.

1 THE COURT: All right. Any reason you couldn't be
2 fair and partial in this case?
3 PROSPECTIVE JUROR WILSON: No.
4 THE COURT: Questions, pass for cause?
5 MR. SCHWARTZ: Just one, Your Honor. Mrs. Wilson,
6 if you were selected as a juror, or an alternate juror in this
7 trial and you had to fill in for one of the other jurors, you
8 would then deliberate on the case itself. Do you understand
9 that?
10 PROSPECTIVE JUROR WILSON: Right.
11 MR. SCHWARTZ: And if you felt that the State had
12 presented evidence beyond a reasonable doubt that the
13 defendant was guilty of two first degree murders, could you
14 come into this courtroom and announce that verdict in front of
15 the defendant?
16 PROSPECTIVE JUROR WILSON: Yes.
17 THE COURT: And if you felt, after hearing the
18 penalty phase evidence, that there was sufficient evidence to
19 warrant the imposition of the death penalty, could you
20 likewise impose the penalty of death yourself?
21 PROSPECTIVE JUROR WILSON: Yes.
22 MR. SCHWARTZ: Thank you very much, ma'am.
23 THE COURT: Pass for cause? Pass for cause?
24 MR. LaPORTA: Yes, Your Honor.
25 MR. ROGER: Yes, Your Honor.

1 THE COURT: Defense pass for cause?
2 MR. LaPORTA: Yes, Your Honor, we pass for cause.
3 MS. McMAHON: Yes.
4 THE COURT: What about you, Ms. -- is it Ms. Cerice-
5 Ortiz?
6 PROSPECTIVE JUROR CERICE-ORTIZ: Yes.
7 THE COURT: How long have you been in Las Vegas?
8 PROSPECTIVE JUROR CERICE-ORTIZ: Eighteen years.
9 THE COURT: And again, if this goes into two phases,
10 if the trial -- at the trial the jury is convinced beyond a
11 reasonable doubt that the defendant is guilty of first degree
12 murder, it goes into a penalty phase. Do you understand that?
13 PROSPECTIVE JUROR CERICE-ORTIZ: Yes.
14 THE COURT: And you are to consider, in assessing
15 punishment, the options of life with the possibility of
16 parole, life without the possibility of parole, and the
17 imposition of the death penalty. Do you understand that?
18 PROSPECTIVE JUROR CERICE-ORTIZ: Yes.
19 THE COURT: Would you equally consider those
20 options?
21 PROSPECTIVE JUROR CERICE-ORTIZ: I would.
22 THE COURT: And what do you do for a living?
23 PROSPECTIVE JUROR CERICE-ORTIZ: I work in a casino.
24 THE COURT: Doing what?
25 PROSPECTIVE JUROR CERICE-ORTIZ: Pit clerk.

1 THE COURT: All right. Are you married? Are you
2 married?
3 PROSPECTIVE JUROR CERICE-ORTIZ: I'm separated.
4 THE COURT: Separated. Do you have any children?
5 PROSPECTIVE JUROR CERICE-ORTIZ: I have an eleven-
6 year-old daughter.
7 THE COURT: Eleven-year-old daughter. Have you ever
8 been in the military?
9 PROSPECTIVE JUROR CERICE-ORTIZ: No, sir.
10 THE COURT: Are you acquainted with anybody in law
11 enforcement?
12 PROSPECTIVE JUROR CERICE-ORTIZ: I have of couple of
13 acquaintance -- friends.
14 THE COURT: Friends. But that's not going to affect
15 your deliberations?
16 PROSPECTIVE JUROR CERICE-ORTIZ: No, sir.
17 THE COURT: You know you're not to give greater
18 weight or lesser weight to a police officer's testimony simply
19 because they're a police officer. Do you understand that?
20 PROSPECTIVE JUROR CERICE-ORTIZ: Yes.
21 THE COURT: You ever been a victim of a crime?
22 PROSPECTIVE JUROR CERICE-ORTIZ: My house was
23 burglarized.
24 THE COURT: Did they ever catch the individual?
25 PROSPECTIVE JUROR CERICE-ORTIZ: No.

1 THE COURT: And that's not going to affect your
2 deliberation, is it?
3 PROSPECTIVE JUROR CERICE-ORTIZ: No, sir.
4 THE COURT: Have you or anyone closely associated
5 with you ever been arrested for a crime?
6 PROSPECTIVE JUROR CERICE-ORTIZ: No, sir.
7 THE COURT: You ever serve on a jury before?
8 PROSPECTIVE JUROR CERICE-ORTIZ: No, sir.
9 THE COURT: Any reason you couldn't be fair and
10 impartial?
11 PROSPECTIVE JUROR CERICE-ORTIZ: No, sir.
12 THE COURT: Thank you so much. Questions, pass for
13 cause?
14 MR. ROGER: Pass for cause.
15 THE COURT: Questions, pass for cause?
16 Ms. McMAHON: I have just a few questions, Your
17 Honor, if I may. Good afternoon. My questions relate to the
18 jury questionnaire that was, of course, filled out last week.
19 And you've heard, while sitting here, me ask other potential
20 jurors questions too. Do you understand that should you be
21 involved in the jury's decision and find my client guilty,
22 that you're going to have to also determine an appropriate
23 punishment?
24 PROSPECTIVE JUROR CERICE-ORTIZ: Yes, ma'am.
25 MS. McMAHON: Do you understand now that in

1 determining the appropriate punishment, that you must consider
2 a defendant's background, educational information, his
3 childhood experience and other factors in determining an
4 appropriate punishment?

5 PROSPECTIVE JUROR CELICE-ORTIZ: Yes, I do.

6 MS. McMAHON: So, in fact, your answers on this are
7 not correct, is that right?

8 PROSPECTIVE JUROR CELICE-ORTIZ: Yes.

9 MS. McMAHON: And the other question, which I've
10 also asked other jurors before, do you understand now that the
11 State has the burden of proving any defendant guilty, and the
12 defendant in a criminal case does not have to, is not required
13 to prove him or herself innocent of the charges? Do you
14 understand that?

15 PROSPECTIVE JUROR CELICE-ORTIZ: Yes, ma'am.

16 MS. McMAHON: Okay. And you can follow both of
17 those ideas, is that correct, you said?

18 PROSPECTIVE JUROR CELICE-ORTIZ: [No audible
19 response].

20 MS. McMAHON: Thank you. I have no further
21 questions. We'd pass for cause.

22 THE COURT: Any peremptory?

23 MR. ROGER: Waive.

24 THE COURT: Any peremptory?

25 MR. LaPORTA: Waive, Your Honor.

1 THE COURT: Ladies and gentlemen, thank you so much.
2 I know it's been -- waiting around. Thank you very much.
3 You're excused. Everybody go back to Room 1013.

4 I'd like the clerk to swear the jury to try the
5 case. We'll swear the alternate jurors in separately. And
6 you're Alternate Juror Number One, all right, Ms. Wilson, and
7 you're Alternate Juror Number Two, all right, Ms. Ortiz? So,
8 the rest of the jurors, please stand up, raise your right hand
9 and be sworn.

10 JURY IS SWORN

11 THE COURT: Please stand up, raise your right hand
12 and be sworn.

13 ALTERNATE JURORS ARE SWORN

14 THE COURT: Ladies and gentlemen, it's incumbent
15 that I read this to you, that no juror may declare to his
16 fellow jurors any fact relating to the case as of his own
17 knowledge. And if any juror discovers during the trial or
18 after the jury has retired that he or any other juror has
19 personal knowledge of any fact in controversy in the case,
20 please disclose this situation to me by way of my bailiff,
21 outside the presence of the other jurors.

22 You may individually take notes, and after the
23 recess the bailiff will pass out paper and pencil to you. But
24 don't let that distract you from what you hear on the witness
25 stand.

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1 I should -- I'm going to read this to you also.
2 There's a few instructions, and please follow them implicitly.
3 It's very important that you follow these instructions. I'll
4 now say a few words about your conduct as jurors.
5 First, do not talk to each other about the case or
6 about anyone who has anything to do with it until the end of
7 the case when you go to the jury room to decide your verdict.
8 Second, do not talk with anyone else about this case
9 or about anyone who has anything to do with it until the trial
10 has ended and you have been discharged as jurors. Anyone else
11 includes members of your family and your friends. You may
12 tell them that you are a juror, but don't tell them anything
13 about the case until after you have been discharged by me.
14 Third, do not let anyone talk to you about the case
15 or about anyone who has anything to do with it. If someone
16 should try to talk to you, please report this immediately to
17 my bailiff, who will report it to me.
18 Don't read any news stories, or articles, or listen
19 to any radio or reports about the case or about anyone who has
20 anything to do with it.
21 Fifth, do not do any research such as consulting
22 dictionaries or other reference materials. And do not make
23 any investigation about the case on your own.
24 Sixth, if you need to communicate with me, simply
25 give a signed note to the bailiff, who will give it to me.

1 And seventh, do not make up your mind about what the
2 verdict should be until after you have gone to the jury room
3 to decide the case, and you and your fellow jurors have
4 discussed the evidence. Please keep an open mind until then.

5 I'm going to ask the clerk to read the -- aloud, the
6 information and the plea that was made thereto by the
7 defendant.

8 (The Clerk read the Information)

9 PROCEEDINGS CONTINUED AND PREVIOUSLY TRANSCRIBED

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FILED

DISTRICT COURT
CLARK COUNTY, NEVADA
JUN 17 9 40 AM '97

THE STATE OF NEVADA

Plaintiff

vs.

MARLO DEMETRIUS THOMAS

Defendant
.....

Loethin Roseman
CLERK CASE NO. C136862

DEPT. NO. VI
DOCKET NO. "B"

Transcript of
Proceedings

BEFORE THE HONORABLE JOSEPH T. BONAVENTURE, DISTRICT JUDGE

PORTION OF JURY TRIAL - DAY 1
MONDAY, JUNE 16, 1997
VOLUME II

APPEARANCES:

For the State:

DAVID P. SCHWARTZ
Chief Deputy District Attorney
DAVID J.J. ROGER
Chief Deputy District Attorney

For Defendant Thomas:

PETER R. LaPORTA
Deputy Public Defender

LEE ELIZABETH McMAHON, ESQ.

COURT REPORTER:

ROBERT MINTUN
District Court

TRANSCRIPTION BY:

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PROCEEDINGS IN PROGRESS

(The Jury is present)

(The clerk reads the Information)

THE COURT: Ladies and gentlemen, that completes the reading of the Information. What we're going to do now is we're going to take our ten-minute recess before -- and then we're going to come back and hear opening statements.

Before I give you any recess, by law I have to admonish you. And it's very important, and please abide by this admonishment; you'll hear it many times. It's three admonishments.

Don't converse among yourselves or with anyone else on any subject connected with the trial; don't read, watch or listen to any report of or commentary on the trial or any person connected with the trial by any medium of information, including, without limitation, newspapers, television and radio; and don't form or express any opinion on any subject connected with the trial until the cause is finally submitted to you.

That basically means you can go out and talk among yourselves, talk about inter-league baseball or whatever, but don't talk about the trial. Wait 'til you're in the jury deliberation room.

When you go home, I'm not going to sequester you, but you're on your honor and my direction, don't read, watch

1 or listen to any reports about the trial; you're not to do
2 that, very important. And don't form or express any opinion
3 on any subject connected with the trial, too; you don't go out
4 and say, well, I think so and so. You wait until you form or
5 express any opinion when you're in the jury deliberation room.
6 And again, as I said, you might see counsel in --
7 outside. They're not going to engage you in chit-chat because
8 they don't want to be accused of currying favor. But don't --
9 you know, please don't take that as an affront.
10 That being said, we'll take a ten-minute recess.
11 MR. LaPORTA: Judge, can we approach before the --
12 we break for the recess?
13 THE COURT: When the jury leaves?
14 MR. ROGER: Now, Judge.
15 MR. LaPORTA: Just right now, Judge.
16 (Off-record bench conference)
17 * * * * *
18 (Jury is not present)
19 THE COURT: All right, we had discussions in
20 chambers about allowing certain individuals to stay in the
21 courtroom; is that correct? Who do you want to stay in the
22 courtroom on behalf of the State?
23 MR. SCHWARTZ: The family of the victims.
24 THE COURT: Any objection to that?
25 MS. McMAHON: No, Your Honor.

1 MR. LaPORTA: No, Your Honor, as long as they're not
2 part of the guilt phase.

3 THE COURT: All right. And that's correct, they're
4 not part of the guilt phase?

5 MR. SCHWARTZ: Yes.

6 THE COURT: They may testify to the penalty but not
7 to guilt.

8 You want anybody to stay in the courtroom?

9 MR. LaPORTA: The defendant's mother, Ms. Georgia
10 Thomas. The same for her, she will not be testifying at the
11 penalty -- I mean, at the guilt phase, but --

12 THE COURT: Any objection to that?

13 MR. SCHWARTZ: No, Your Honor.

14 THE COURT: All right. Then that'll be allowed, but
15 everybody else will be excluded. So any and all witnesses are
16 excluded from the courtroom and admonished not to discuss your
17 testimony with any other witness.

18 Mr. LaPorta?

19 MR. LaPORTA: Yes. Your Honor, this is a motion for
20 a mistrial, and it's based upon two different things, all
21 right.

22 The first thing that I want to address is, first of
23 all, there are absolutely no African-Americans on the jury
24 panel. There is one alternate that is sitting on that -- is
25 sitting as an alternate. Judge, I understand the status of

1 the Supreme Court law that we must demonstrate that the Jury
2 Commissioner's selection process is unfair and biased. I'm
3 privy to some of the most recent studies done here in Clark
4 County, and I understand that we're not able to do that.
5 But considering the fact that sometime in the future
6 the present selection process may be considered biased or
7 prejudiced, what I want to do is preserve for the record Mr.
8 Thomas's rights to claim that he didn't get a jury of his
9 peers based upon any future unfairness that could be
10 determined. So that's the one -- the one area, Judge.
11 Now, for the record, we did have one Mr. Felton who
12 is an African-American, Mr. Luster an African-American, Mr.
13 Sheppard who is an African-American, and a Stuart who is an
14 African-American. All four did not -- were not death-penalty
15 qualified; either they could not consider equally all three
16 forms of punishment, or they couldn't consider one entirely.
17 That clearly led to the situation where they just weren't
18 qualified to sit on this jury. All right?
19 There was one particular juror, and this is the
20 second part of my argument and motion for mistrial, who was
21 clearly entitled to sit on that jury, and that was Juror
22 Number 351, Mr. Stuart, who was challenged --
23 THE COURT: Is it Stuart?
24 MR. LaPORTA: No, Mr. Wilson -- no, I'm sorry, Your
25 Honor --

1 THE COURT: Kevin Evans?
2 MR. SCHWARTZ: Evans.
3 MR. LaPORTA: Number 350, I don't have his name
4 here.
5 MS. McMAHON: Kevin Evans.
6 MR. LaPORTA: Kevin Evans. And there was a Batson
7 challenge to that, Your Honor, and the State's reasons were
8 that he was chewing gum, that his attitude appeared to be
9 cavalier -- to the defense it didn't appear to be cavalier --
10 and that he was twenty-two years of age. I didn't realize
11 that your age had anything to do with your ability to
12 determine whether -- your judgment and your ability to sit on
13 a jury. And also that he lived at home.
14 Judge, we just don't consider these adequate reasons
15 to have kicked this particular and only African-American off
16 of this jury. And for that reason, Your Honor, we'll move for
17 a mistrial.
18 THE COURT: State want to respond?
19 MR. SCHWARTZ: Yes, Your Honor, briefly.
20 Your Honor, with regard to Mr. Evans, it was his
21 maturity, not so much as his chronological age. Of course he
22 was young, twenty-two years of age, but he acted very
23 immaturely in the situation where he confronted himself today.
24 He's being selected as a potential juror in a capital murder
25 case. I watched him before he was even called; he was sitting

1 in the back, kind of slouching, smirking, chewing gum. Very
2 much like the fellow who sat in this corner that the Court,
3 because of his behavior, I think he was falling asleep, had
4 leave the courtroom. Mr. Evans wasn't far from that.

5 When he got up into the jury box his attitude
6 changed a little bit, but he still slouched in the chair, he
7 was still chewing his gun -- gum. He was not too excited
8 about answering the questions, and he did hesitate when we
9 asked him about the death penalty.

10 As Mr. LaPorta mentioned, there were about six or
11 seven other African-Americans who were on this panel, so there
12 was a good cross-section of the community here in court, but
13 many of them could not, in any event, vote for the death
14 penalty under any circumstances, so they were excused.

15 THE COURT: All right. The defense motion for
16 mistrial are denied on both grounds.

17 Anything else to come before the Court?

18 MR. LaPORTA: No, Judge.

19 THE COURT: Anything else?

20 MR. SCHWARTZ: No, Your Honor.

21 THE COURT: All right.

22 (The Court recessed)

23 (Jury is present)

24 THE COURT: Mr. LaPorta I guess is making a phone
25 call. Any objection if we just start without him?

1 MS. McMAHON: No, Your Honor, that'd be fine.

2 THE COURT: All right. Mr. Roger, you need the
3 podium?

4 MR. ROGER: No, Your Honor. Thank you.

5 THE COURT: All right. We'll hear the State's
6 opening statement now, ladies and gentlemen.

7 PLAINTIFF'S OPENING STATEMENT

8 MR. ROGER: May it please the Court, counsel. Good
9 afternoon, ladies and gentlemen.

10 Monday, April 15th, 1996 was a very dark day for two
11 young men. Carl Dixon, twenty-three years of age, Matthew
12 Gianakes, age twenty-one, were prep room workers at the Lone
13 Star Steakhouse. This is located at 3131 North Rainbow at the
14 corner of Cheyenne and Rainbow in the northwest area of town.
15 These two young men went to work at 8:00 a.m. in order to
16 prepare the meals for that day. They worked in the pantry
17 area where they carved up the steaks and other meals which
18 were supposed to be prepared ahead of time for that day.

19 Little did these two young men know that something
20 evil was lurking out in the parking lot, this evil person who
21 is the defendant, Marlo Thomas. Little did these two young
22 men know that Marlo Thomas, formerly employed by the Lone Star
23 Steakhouse, had driven from Hawthorne, Nevada that previous
24 night with his wife Angela Love-Thomas and his fifteen-year-
25 old brother-in-law, Kenya Hall. They stayed at his aunt's

1 house, Emma Nash, and his cousin Barbara Smith the evening
2 prior to the killing. And somewhere around 7:00 a.m. they all
3 loaded up into Angela's mother's vehicle and went to the Lone
4 Star Steakhouse.

5 Vincent Oddo, the manager at the restaurant,
6 happened to be performing his morning duties, and he had
7 observed a young man by the name of Stephen Hemmes,
8 H-E-M-M-E-S arrive for work as a pantry worker. Mr. Hemmes
9 was wearing sandals, which was inappropriate attire for him to
10 work in the kitchen, and he told Mr. Hemmes to go home and go
11 to -- go get some regular shoes on.

12 The defendant was outside with Kenya Hall. He had
13 gotten out of the vehicle; he went back into the vehicle and
14 obtained a revolver. This was a Smith & Wesson five-shot
15 revolver; it was loaded. The defendant told Kenya Hall, well,
16 let's go inside; he told Angela to stay outside.

17 And it is at that point that Marlo Thomas and
18 fifteen-year-old Kenya Hall went up to the back door of the
19 restaurant; it's the west door, which leads into the kitchen
20 and pantry area. Steve -- Stephen Hemmes was exiting the
21 restaurant in order to go home, and he approached the
22 defendant. Stephen Hemmes had worked with the defendant at
23 the Lone Star restaurant. They exchanged some minimal
24 conversation. At that point the defendant asked Stephen
25 Hemmes where he was going. Mr. Hemmes told him that he had to

1 go home to change his shoes. The defendant then asked him how
2 long he was going to be gone. Mr. Hemmes responded, about
3 twenty minutes.

4 It is at that point that both Mr. Hall, the fifteen-
5 year-old, and the defendant entered the restaurant, going into
6 the west doors into the pantry area. The defendant had his
7 Smith & Wesson revolver, and both he and Mr. Hall went
8 directly to the manager's office. Vince Oddo, the manager,
9 was on the telephone at the time; he heard the door -- knock
10 on the door, and he answered it. Much to his surprise, his
11 astonishment and horror, he was faced with the barrel of a
12 gun, and the defendant was holding it. He told the police
13 that day that the defendant demanded the money. Vincent Oddo
14 immediately complied; he went down on the floor and started to
15 open the floor safe.

16 At that point the defendant handed the gun to the
17 fifteen-year-old, Kenya Hall, and told him, after the safe was
18 open to kill him. Mr. Oddo continued opening the safe as Mr.
19 Hall stood nearby with the gun pointed at him.

20 It is at that point that the defendant confronted
21 the two kitchen workers. The physical evidence suggests that
22 the defendant went into the kitchen area, the pantry area
23 where Matthew Gianakes was working. According to the physical
24 evidence and the reasonable inferences, the defendant grabbed
25 a large meat-cutting knife which was on the pantry table where

1 some steaks were being cut. He stabbed Mr. Gianakes once in
2 the left back, striking the left lung. As Mr. Gianakes turned
3 around he received a second stab wound; this stab wound went
4 into the left chest, striking the heart. Mr. Gianakes was
5 able to leave, running out of the restaurant, where he
6 eventually collapsed at the Rebel gas station which was
7 nearby.

8 During this period of time Mr. Oddo had turned over
9 the money in three Bank of America bank bags to young Kenya
10 Hall. And much to the good graces of Kenya Hall and the luck
11 of Vincent Oddo, Kenya Hall did not abide by the instructions
12 which were given to him by the defendant. After the money was
13 turned over, Kenya Hall turned around and Vince Oddo took off
14 running. He ran out of the front door, across the street,
15 through a parking lot and into an Albertson's shopping center,
16 where he eventually called the police.

17 Meanwhile, the defendant, taking the same knife that
18 he used to kill Matthew Gianakes, went into the men's room
19 where Carl Dixon was. He had seen both of these individuals
20 when he entered the pantry area of the restaurant. He
21 confronted Carl Dixon. Recognizing that a robbery was being
22 taken place in the manager's office, recognizing that Kenya
23 Hall was there, he confronted Carl Dixon. Carl Dixon fought
24 for his life. He had stab wounds to his arms, to his hands,
25 but unfortunately he was unable to fend off his attacker, his

1 friend. He had worked with the defendant at the Lone Star
2 Steakhouse. In total, young Carl Dixon received nineteen stab
3 wounds to his upper torso and some to his leg, and to his arms
4 and to his hands. He bled to death and died in the men's
5 room.

6 At that point the defendant ran out to the car where
7 Angela was waiting. Kenya Hall was there, and he learned that
8 Vince Oddo, the manager, had gotten away.

9 Almost immediately the car took off and they went
10 back over to Emma Nash's house. And he spoke with Emma Nash
11 and Barbara Smith. He had blood on his pants, blood on his
12 shirt. He had the murder weapon with him, he had the Smith &
13 Wesson revolver in his possession. And he told his aunt and
14 cousin that he had done something which was going to land him
15 in prison, that he had possibly killed two people. He began
16 to count out the money, and he gave the two ladies a thousand
17 dollars to give to his mother, indicating that his mother
18 needed the thousand dollars. He gave the Smith & Wesson
19 revolver to Emma Nash, and asked her to hold it and give it to
20 her son, Matthew.

21 He then went outside into the back yard. They lived
22 at 2505 -- can't remember the street, but there's a desert
23 area behind. Either the defendant or young Kenya Hall threw
24 away the bloody pants, the bloody shirt, the carving knife, in
25 the desert. They immediately took off for Hawthorne.

1 Meanwhile, a criminalist and police detectives
2 responded to the Lone Star restaurant. They spoke with
3 Vincent Oddo. They wanted to know who the killer was, who the
4 robber was, who the kidnapper was. And Vincent Oddo, without
5 hesitation, told them that it was Marlo Thomas, a former
6 employee.

7 Stephen Hemmes, who had the good fortune of wearing
8 the wrong shoes that day, had responded to the restaurant, and
9 he, too, told the detectives that it was Marlo Thomas who had
10 been at the restaurant just a short time earlier. Detectives
11 immediately put out a broadcast, requesting that all law
12 enforcement individuals try to stop the defendant.

13 A criminalist arrived at this bloody scene. They
14 found a small pool of blood near the freezer in the pantry
15 area, presumably the blood of Matthew Gianakes. He had
16 collapsed over at the Rebel store; he was taken to University
17 Medical Center, where he was pronounced dead a short time
18 later.

19 A criminalist then went into the men's room,
20 certainly a bloody scene, smear marks on the walls and the
21 partitions of the urinal. Young Carl Dixon was on his back,
22 dead at the scene.

23 Later that afternoon, detectives learned that the
24 defendant had once lived in the area of Emma Nash's house.
25 They went to the residence. Both Emma Nash and Barbara Smith

1 gave statements to the detectives indicating what had taken
2 place. They told detectives that there was bloody clothes out
3 in the desert, a knife. Emma Nash recovered the Smith &
4 Wesson revolver which was given to her by the defendant.

5 Later that afternoon, somewhere around 1:00 or 2:00
6 o'clock that afternoon, Nevada Highway patrolmen spotted
7 Angela Love, the defendant and young Kenya Hall near
8 Hawthorne, Nevada. The vehicle was pulled over and all three
9 individuals were placed under arrest.

10 Kenya Hall spoke with David Bailey, a Nevada Highway
11 Patrol trooper. As it turns out, Mr. Bailey had been a coach,
12 a softball coach or a baseball coach for young Kenya Hall, and
13 Kenya Hall spoke with him.

14 Later that afternoon, somewhere around 4:00 o'clock
15 p.m. at the Clark County Medical Examiner's office, autopsies
16 were performed on the two victims. Chief Medical Examiner
17 Giles Sheldon Green and Deputy Medical Examiner Robert Jordan
18 performed the autopsy on the first victim, Carl Dixon. Dr.
19 Green and Dr. Jordan noted that the victim had close to
20 fifteen defensive wounds to his arms, his forearms and his
21 hands. These were cutting wounds that he received when he was
22 trying to fend off his killer. They totaled nineteen stab
23 wounds to the upper body. Dr. Green determined that this once
24 healthy young male, Carl Dixon, had died of numerous stab
25 wounds to the upper torso.

1 Shortly thereafter Dr. Jordan performed the autopsy
2 on Matthew Gianakes. He learned that the victim had suffered
3 a stab wound to the back, he learned that Matthew Gianakes
4 received a stab wound to the heart, and that was his cause of
5 death.

6 Ladies and gentlemen, April 15th, 1996 was a date in
7 which two young men were killed for no reason. They were
8 killed during a robbery, they were killed during a kidnapping.
9 It was not Kenya Hall who did the stabbing, it was the
10 defendant, Marlo Thomas.

11 Thank you.

12 THE COURT: Thank you, Mr. Roger.

13 Any opening on behalf of the defense?

14 MR. LaPORTA: Your Honor, at this time we'll waive
15 -- reserve our opening for our case in chief.

16 THE COURT: Okay. Do you have any witnesses out
17 there?

18 MR. SCHWARTZ: No, Your Honor.

19 THE COURT: All right, ladies and gentlemen, it's
20 been a long day and we've accomplished a lot. I certainly
21 appreciate your attention on this case; it's a very serious
22 and important case, both to the defense and to the State of
23 Nevada. And we'll begin testimony tomorrow morning at 8:30.
24 On Tuesdays and Thursdays I'll start at 8:30; I'm going to
25 start a little later on Wednesday. But tomorrow at 8:30 be

1 here sharp and we'll begin hearing testimony on behalf of the
2 State.

3 That being said, I'm going to admonish you again,
4 ladies and gentlemen. And please follow my admonishments, the
5 list that I read to you before and this admonishment that I
6 read to you before every recess.

7 Don't converse among yourselves or with anyone else
8 on any subject connected with the trial, read, watch or listen
9 to any report of or commentary on the trial or any person
10 connected with the trial by any medium of information,
11 including, without limitation, newspapers, television and
12 radio; and don't form or express any opinion on any subject
13 connected with the trial until the cause is finally submitted
14 to you.

15 We'll be in recess until 8:30 tomorrow morning.

16 (Court recessed until the following day,

17 Tuesday, June 17, 1997 at 8:30 a.m.)

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CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE
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EXHIBIT 131

EXHIBIT 131

15

ORIGINAL

FILED

DISTRICT COURT
CLARK COUNTY, NEVADA
JUN 20 8 11 AM '97

THE STATE OF NEVADA	.	<i>Joseph T. Bonaventure</i>	CASE NO. C136862
Plaintiff	.		
vs.	.	DEPT. NO. VI	
	.	DOCKET NO. "B"	
MARLO DEMETRIUS THOMAS	.	Transcript of	
Defendant	.	Proceedings	
.....	.		

BEFORE THE HONORABLE JOSEPH T. BONAVENTURE, DISTRICT JUDGE

JURY TRIAL - DAY 3
WEDNESDAY, JUNE 18, 1997
VOLUME IV

APPEARANCES:

For the State:	DAVID P. SCHWARTZ Chief Deputy District Attorney DAVID J.J. ROGER Chief Deputy District Attorney
For Defendant Thomas:	PETER R. LaPORTA Deputy Public Defender LEE ELIZABETH McMAHON, ESQ.

COURT REPORTER:	TRANSCRIPTION BY:
ROBERT MINTUN District Court	NORTHWEST TRANSCRIPTS, INC. Las Vegas Division P.O. Box 35257 Las Vegas, Nevada 89133-5257 (702) 658-9626

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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

1 LAS VEGAS, NEVADA, WEDNESDAY, JUNE 18, 1997, 9:40 A.M.
2 (Court is called to order)
3 (Jury is not present)
4 (Off-record colloquy)
5 THE COURT: -- outside the presence of the jury.
6 When we bring the jury in -- we ended up last night
7 that the State rested -- rested on their case. Mr. LaPorta,
8 what are you going to do when the jury comes in?
9 MR. LaPORTA: Well, Judge, at this juncture, outside
10 of Mr. Thomas we have no witnesses to present during our case
11 in chief. We have had extensive conversations with Mr. Thomas
12 about his right to testify; he's been, I believe, properly
13 advised and is solid in our -- in all of -- in all of the
14 bases for our decision, or his decision, I believe, which is
15 not to testify on his behalf during the defense's case in
16 chief. So if his decision is the same as when I last talked
17 to him, the State will have no -- or the defense will have no
18 witnesses to present.
19 THE COURT: All right. Is that correct, Mr. -- do
20 you want to say anything, Mr. --
21 THE DEFENDANT: No. Yes, sir.
22 THE COURT: That's correct?
23 THE DEFENDANT: Yeah.
24 THE COURT: All right. You don't want to testify at
25 this --

1 THE DEFENDANT: No.
2 THE COURT: All right. The record will so reflect.
3 So we'll just bring the jury in. After we proceed
4 with the instructions, then you'll waive your opening
5 statement and you'll rest; is that correct?
6 MR. LaPORTA: That's correct, Your Honor.
7 THE COURT: All right. And the -- this is the time
8 set for settling instructions in open court outside the
9 presence of the jury. Does the State request -- or does the
10 State object to any of the instructions the Court has
11 indicated will be given?
12 MR. ROGER: No, Your Honor.
13 THE COURT: Does the defense object to any of the
14 instructions the Court has indicated will be given?
15 MR. LaPORTA: Your Honor, the defense objects to the
16 instructions as a package, based upon the defendant's
17 constitutional rights that we believe, that as a whole, the
18 instructions violate the defendant's due process rights under
19 the United States and the State of Nevada's constitution.
20 That's the only objection we'll make, Your Honor.
21 THE COURT: Does the State want to respond to that?
22 MR. ROGER: I don't know how, Judge. No, no
23 response.
24 THE COURT: Yeah, again, I -- I respect your right
25 to object to that and it's a matter of record, but I don't

1 quite understand it so your motion is denied.

2 Does the State request the giving of any
3 instructions in addition to those the Court has indicated will
4 be given?

5 MR. ROGER: No, Your Honor.

6 THE COURT: Does the defense request the giving of
7 any instructions in addition to those the Court has indicated
8 will be given?

9 MR. LaPORTA: No, Your Honor, not outside of those
10 that have already been accepted.

11 THE COURT: All right. And it's my understanding
12 for the record that you did not want to include in the
13 instructions the instruction regarding, "the law does not
14 compel a defendant in a criminal case to take the stand and
15 testify, and no presumption may be raised and no inference of
16 any kind may be drawn from the failure of the defendant to
17 testify". Is that correct, you're not requesting that?

18 MS. McMAHON: That is correct, Your Honor.

19 THE COURT: And you're also requesting only one
20 lesser-included, which is the second degree murder, is that
21 correct?

22 MS. McMAHON: That is also correct, Your Honor.

23 THE COURT: And you're not requesting any other
24 lesser included?

25 MS. McMAHON: No, Your Honor, we specifically did

1 not request either voluntary or involuntary manslaughter to be
2 included in the instructions.

3 THE COURT: Okay. All right.

4 MS. McMAHON: Thank you.

5 THE COURT: Counsel stipulate we've settled these
6 instructions in open court and that we can give the
7 instructions prior to argument?

8 MR. ROGER: Yes, Judge.

9 MS. McMAHON: Yes, Your Honor.

10 THE COURT: And again, I'm not presuming anything,
11 but just for the record, because if they come, you know, we
12 have a minute without the jury, if there is a penalty phase,
13 and only if the jury finds first degree murder, I'm prepared
14 to go tomorrow on it, but it's my understanding the defense
15 needs more time?

16 MS. McMAHON: Yes, Your Honor, that's correct. We
17 have an expert witness who will not be available 'til next
18 week. We have rather extensive counselings scheduled with the
19 defendant's family, and we feel that we will in fact be ready
20 to go forward on Monday, but not tomorrow.

21 THE COURT: All right. Certainly I want to conclude
22 this case, but I understand that and it's a very important
23 case, and I'm not going to rush the defense. So I'll go along
24 with this defense request to -- if we have a penalty hearing
25 it'll be at 9:15 on next Monday.

1 What date is that, Ms. Clerk?
2 THE CLERK: It's June 23rd.
3 THE COURT: And everybody will be ready at that
4 time? The State will be ready?
5 MR. ROGER: Yes.
6 MR. SCHWARTZ: Yes, Your Honor.
7 THE COURT: And that'll give you ample time to be
8 ready, is that correct?
9 MS. McMAHON: Yes, Your Honor, that's correct.
10 THE COURT: All right. That's fine --
11 MS. McMAHON: Thank you.
12 THE COURT: -- with the Court.
13 Anything else to come before the Court --
14 MR. ROGER: Not by the State.
15 THE COURT: -- before we bring in the jury?
16 MR. ROGER: No, Your Honor.
17 THE COURT: Anything else? By the defense?
18 MS. McMAHON: No, Your Honor --
19 MR. LaPORTA: No, Judge.
20 MS. McMAHON: -- thank you.
21 THE COURT: All right, bring in the jury.
22 (Jury is present)
23 THE COURT: All right, counsel stipulate to the
24 presence of the jury?
25 MR. ROGER: Yes, Your Honor.

1 MS. McMAHON: Yes, Your Honor.
2 MR. LaPORTA: Yes, Judge.
3 THE COURT: All right. As you know, ladies and
4 gentlemen -- thank you very much for coming again, we
5 appreciate it and appreciate your attention in this very
6 important case, both to the State of Nevada and to the
7 defendant. We're here to resume this case. Yesterday, last
8 night, the State rested their case.
9 Is that correct?
10 MR. ROGER: That's correct, Judge.
11 THE COURT: Now as far as the defense is concerned?
12 MR. LaPORTA: The defense will be presenting no
13 witnesses at this time, Your Honor. We will rest our case.
14 THE COURT: All right. So you waive your opening
15 statement and you rest at this time?
16 MR. LaPORTA: Yes, Your Honor, we do.
17 THE COURT: All right. So the case is, ladies and
18 gentlemen, is now concluded with the testimony.
19 At this time we're going to give you the
20 instructions of law regarding this case. I'd like to orally
21 instruct you without reading the instructions, but these
22 instructions are of such importance, almost every word has
23 some significance, and they're very complicated and long, some
24 of 'em, that it's best that I read these instructions to you.
25 But please be advised you'll be allowed to take these

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1 instructions of law into the jury deliberation room along with
2 forms of verdicts that have been prepared for your
3 convenience, and all the exhibits that were admitted in
4 evidence. So what we're going to do now is read the
5 instructions.

6 Thereafter, we're going to hear brief closing
7 arguments on this case, ladies and gentlemen. Since the State
8 has the burden of proof, they sort of have two bites of the
9 apple; they'll get -- they'll -- the State will give a
10 statement, and then the defense will be allowed to give their
11 closing statement, and then the State will be allowed to give
12 a rebuttal closing argument, so that they have sort of two
13 bites of the apple, two closing arguments. All right?

14 So we'll give the instructions, we'll hear the
15 closing arguments, and then this case will be submitted to
16 you.

17 That being said, let me get to the instructions.
18 And bear with me on this, please.

19 Instruction Number 1. It is now my duty as Judge to
20 instruct you on the law that applies to this case. It is your
21 duty as jurors to follow these instructions and apply the
22 rules of law to the facts as you find them from the evidence.
23 You must not be concerned with the wisdom of any rule of law
24 stated in these instructions. Regardless of any opinion you
25 may have as what the law ought to be, it would be a violation

1 of your oath to base a verdict upon any other view of the law
2 than that given in the instructions of the Court.

3 2. If in these instructions any rule, direction or
4 idea is repeated or stated in different ways, no emphasis
5 thereon is intended by me, and none may be inferred by you.
6 For that reason, you are not to single out any certain
7 sentence or any individual point or instruction and ignore the
8 others, but you are to consider all the instructions as a
9 whole and regard each in the light of all the others. The
10 order in which these instructions are given has no
11 significance as to their relative importance.

12 3. The information is but a formal method of
13 accusing a person of a crime, and it is not of itself any
14 evidence of his guilt. In this case it is charged in an
15 information that on or about, or between April 14, 1996 and
16 April 15, 1996 the defendant committed the following offenses:

17 Count I, conspiracy to commit murder and/or robbery.
18 Defendants did on or about April 14, 1996 and April 15, 1996,
19 then and there meet with each other and between themselves,
20 and each of them with the other, willfully, unlawfully,
21 feloniously conspire to commit a crime, to wit: murder and/or
22 robbery; and in furtherance of said conspiracy, defendants did
23 commit the acts as set forth in Counts II, II and IV, said
24 acts being incorporated by this reference as though fully set
25 forth herein.